TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 282.

THE TOWN OF THOMPSON, PLAINTIFF IN ERROR,

vs.

ORLANDO PERRINE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 17, 1878.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Orlando Perrine, plaintiff, and The Town of Thompson, in the county of Sullivan, N. Y., defendant, a manifest error hath happened, to the great damage of the said Town of Thompson, defendant, as is said, and as appears by its complaint: we being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this third day ot September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the second circuit.

This writ allowed Sept. 3, 1878.

WM. G. CHOATE, *D. J.*

2 (Indorsed:) U. S. circuit court southern dist. of N. Y. Orlando Perrine against The Town of Thompson, in the county of Sullivan, N. Y. Writ of error. T. F. Bush, att'y for pl'ff in error, Monticello, N. Y. U. S. circuit court. Filed Sep. 9, 1878. John I. Davenport, clerk.

United States circuit court, southern district of New York.

ORLANDO PERRINE
ag'st
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

STATE OF NEW YORK,
County of Sullivan, ss:

Timothy F. Bush, of said county, being *being* duly sworn, deposes that on the 4th day of September, 1878, he duly served the within writ of error on the above named plaintiff by delivering a copy thereof to James K. Hill, the said plaintiff's attorney, personally, at his office, No. 37 Wall street, New York City, and leaving the same with him.

T. F. BUSH.

Sworn before me, Sep't 7, 1878.

PETER E. PABEN,
Notary Public.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify that the following pages, numbered from four to two hundred and eighty-nine, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of

3 The Town of Thompson, in the county of Sullivan, plaintiff in error, against Orlando Perrine, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the said United States the one hundred and third.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

4 (71.)

U. S. circuit court for the southern district of New York, in the second circuit.

Pleas before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, of the term of April, 1878, to wit, of the 22 day of May, in the year of our Lord one thousand eight hundred and seventy-eight.

Witness the honorable Sam'l Blatchford, one of the judges of the said circuit court.

JOHN I. DAVENPORT, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, on the first day of May, 1876, in April term, before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, at the United States court buildings in the city of New York, came Orland Perrine, by James K. Hill, his attorney, and brought into the said court, before the aforesaid judges thereof, then there, his certain declaration against The Town of Thompson, in the county of Sullivan, of a plea of trespass on the case upon promises; which said declaration follows in these words, that is to say:

5 *Capias.*

The President of the United States of America to the marshal of the southern district of New York, greeting:

We command you that you summon The Town of Thompson, in the county of Sullivan, State of New York, defendant, if it shall be found in your d strict, and it safely keep so that you may have its body before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit, to be held at the United States court buildings, City Hall Park, in the city of New York, in the said southern district, on the 2d day of August, 1875, to answer

unto Orlando Perrine, plaintiff in a plea of trespass; and also to a certain bill of the said plaintiff against the said defendant for five thousand one hundred and forty-five dollars, and interest on coupons of bonds issued by the defendant, according to the custom of the said court, before the said judges, then and there to be exhibited, and that you have then and there this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of New York, the 27th day of July, in the year one thousand eight hundred and seventy-five, and of the Independence of the United States the one hundredth.

[L. S.] KENNETH G. WHITE, *Clerk.*

JAMES K. HILL,
Pl'ff's Attorney, 62 Wall st., New York City.

(Indorsed:) U. S. circuit court for the southern district of New York. Orlando Perrine vs. Town of Thompson. Capias. Filed August 2d, 1875.

I hereby certify that on the 31 day of July, 1875, at New York, in my district, I personally served the within summons upon the within named Town of Thompson by exhibiting to Charles T. Kilburn, supervisor of said town, the within original, and at the same time leaving with him a copy thereof.

Dated August 2d, 1875.

OLIVER FISKE,
U. S. Marshal, S. D. N. Y.

AUG. 2, 1875.

6 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

Orlando Perrine, plaintiff in the suit, by James K. Hill, his attorney, complains of the Town of Thompson, in the county of Sullivan, in the State of New York, defendant, and avers:

First. That the plaintiff is a resident of the State of New Jersey, and that the defendant is a corporation duly created under and by virtue of the laws of the State of New York, and was and is a town in the county of Sullivan, in the State of New York, and in the southern district of said State.

Second. That on the fourth day of May, 1868, the legislature of the said State of New York passed an act which became a law, entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deer Park in the county of Orange, to Port Jervis, Orange County."

That in and by the said act of the legislature the town of
7 Thompson was authorized in substance and effect to aid in the construction of a railroad and to issue bonds, through commissioners to be appointed for that purpose.

That said act is chapter 553 of the laws of the State of New York for 1868, and the plaintiff prays leave to refer to the same as a part of this complaint with like effect as if said act was fully set out and incorporated herein.

That on the second day of April, 1869, the legislature of the said State of New York duly passed another act, which also became a law, entitled "An act to amend an act entitled 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deer Park, in the county of Orange, to Port Jervis, Orange County, passed May fourth, eighteen hundred and sixty-eight.'"

That the said last mentioned act is chapter 96 of the laws of the State of New York for 1869, and the plaintiff prays leave to refer to the same as a part of this complaint with like effect as if said last mentioned act was fully set out and incorporated herein.

Third. That afterwards, and in pursuance of the aforesaid acts of the legislature, Giles M. Benedict, Nathan S. Hamilton, and William H. Cady were duly appointed commissioners for the said town of Thompson to carry into effect the purposes and provisions of the said acts of
8 the legislature, and that they subsequently duly qualified and entered upon the discharge of their duties as such commissioners.

Fourth. That the said commissioners afterwards, and on or about the first day of May, 1869, in pursuance of the said acts of the legislature, duly executed and issued one hundred and forty-eight bonds of one thousand dollars each, numbered from 1 to 148, both inclusive, in the following form:

No. .] UNITED STATES OF AMERICA, [$1,000.00

TOWN OF THOMPSON, STATE OF NEW YORK, COUNTY OF SULLIVAN.

This bond is a valid security, being issued by virtue of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deer Park, in the county of Orange, to Port Jervis, Orange County, passed May fourth, eighteen hundred and sixty-eight," and of the act amendatory thereof, passed April first, eighteen hundred and sixty-nine.

Know all men by these presents that the Town of Thompson, in the county of Sullivan and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the acts above entitled and referred to, and for value received in the stock of the Monticello and Port Jervis Railway Company, promises to pay the bearer the sum of one thousand dollars on the first day of March, in the year one
9 thousand eight hundred and ninety-nine, at the National Union Bank of Monticello, N. Y., with interest at seven per cent. per annum, payable semi-annually on the first day of March and September in each year at the Hanover National Bank of the city of New York, on the presentation and surrender of the coupons for such interest.

In witness whereof we have hereunto set our hands and seals, and

have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this first day of May, in the year one thousand eight hundred and sixty-nine.

(Signed) G. M. BENEDICT,
N. S. HAMILTON,
W. H. CADY,
Commissioners.

Registered in the county clerk's office of the county of Sullivan this first day of May, 1869.

C. S. MORRIS,
County Clerk.

Fifth. That annexed to each of the said bonds at the time of its issue was a series of fifty-nine coupons signed by the said W. H. Cady, one of the said commissioners, whereby the said Town of Thompson promised and undertook to pay to the bearer thereof the interest on such bond. That the said bonds and coupons, upon their being issued, passed into the possession of and became the property of various persons and corporations in good faith and for a valuable consideration.

Sixth. That afterwards, and on the twenty eighth day of April,
10 1871, the legislature of the State of New York passed an act which became a law legalizing and confirming the acts of the said Nathan S. Hamilton, Giles M. Benedict, and William H. Cady, as commissioners, in issuing and disposing of the said bonds. That the said last mentioned act is entitled "An act to legalize and confirm the acts of the commissioners of the towns of Thompson and Forestburgh, in the county of Sullivan, and of Deer Park, in the county of Orange, in issuing and disposing of the bonds of their respective towns to build a railroad from the village of Monticello, in the county of Sullivan, to the village of Port Jervis, in the county of Orange, under chapter five hundred and fifty-three of the laws of eighteen hundred and sixty eight, and to legalize and confirm all bonds heretofore issued by such commissioners under said chapter of laws now held by or owned by bona fide purchasers."

That the said last mentioned act is chapter 899 of the laws of the said State for the year 1871, and the plaintiff prays leave to refer to the same as a part of this complaint with like effect as if said last mentioned act was fully set forth and incorporated herein.

Seventh. That the Town of Thompson paid to the respective holders thereof the coupons that became due on the first day of March and September, 1870, and on the first day of March and September, 1871.

Eighth. That afterwards and prior to the commencement of
11 this action the plaintiff purchased in the open market at the city of New York for value, and became the owner of twenty-one of the said bonds, numbered as follows, viz, 28, 29, 30, 122, 123, 124, 125, 126, 127, 128, 129, 130, 138, 139, 140, 141, 142, 143, 144, 145, and 146, with the coupons thereunto attached and belonging, and the said bonds and coupons so purchased were delivered to the plaintiff.

Ninth. That annexed to the bond No. 28 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.
COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 28.

W. H. CADY,
Commissioner.

That although the said coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said coupon.

12 Tenth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 28.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this
13 action was and still is the owner and holder of the said last mentioned coupon.

Eleventh. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 28, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 28.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made pay-

able, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

14 That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Twelfth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 28, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond number 28.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

15 That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

Thirteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraph of this complaint, further says that annexed to bond number 28, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 28.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not

16 been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

Fourteenth. The plaintiff, for a separate and distinct cause of action,

of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 29.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

Nineteenth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29, at the time of its issue, and accompanying
22 it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 29.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

Twentieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that an-
23 nexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures, following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 29.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly pre-

sented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

24 Twenty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 29.

W. H. CADY,
Commissioner.

That although the last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

25 Twenty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 29, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 29.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

26

Twenty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following :

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 30.

W. H. CADY,
Commissioner.

That although the last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

27 That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

Twenty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following :

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 30.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has

28 not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

Twenty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following :

$35.] THE TOWN OF THOMPSON, [$35

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 30.

W. H. CADY,
Commissioner.

That although the last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made
29 payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

Twenty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 30.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly
30 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Twenty-seventh. The plaintiff for a separate and distinct cause of action, repeating the allegation contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond No. 30 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 30.

W. H. CADY, *Commissioner.*

31 That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Twenty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at the the time of its purchase by the plaintiff, was a coupon in the words and figures following:

THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York on the first day of September, 1874, thirty-five dollars
32 for interest due that day on bond No. 30.

W. H. CADY, *Commissioner.*

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

Twenty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 30 at the time of its issue, and accompanying it at time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of
33 the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 30.

W. H. CADY, *Commissioner.*

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of said last mentioned coupon.

Thirtieth. The plaintiff, for a separate and distinct couse of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond

number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

34 COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due on that day on bond No. 122.

W. H. CADY,
Commissioner.

That although the last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

Thirty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122, at the time of its issue and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

35 $35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 122.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Thirty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that
36 annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 122.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

37 Thirty-third. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 122.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this
38 action, was and still is the owner and holder of the said last mentioned coupon.

Thirty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 122.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made

payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to
39 make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

Thirty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September. 1874, thirty-five dollars for interest due that day on bond No. 122.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly
40 presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not bken paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

Thirty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 122 at the time of its issue, and accompanying it at the time of its purcease by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 122.

W. H. CADY,
41 *Commissioner.*

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

Thirty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th,

6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

42 Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 123.

W. H. CADY.
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Thirty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plantiff, was a coupon in the words and figures following:

43 $35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond 123.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

Thirty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it
44 at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 123.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fortieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th,
45 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 123.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

46 Forty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123 at the time of the issue, and acc mpanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due on that day on bond No. 123.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

47 Forty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 123, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 123.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this ac-
48 tion was and still is the owner and holder of the said last mentioned coupon.

Forty-third. The plaintiff, or a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 123 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 123.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

49 That the plaintiff at the time of the commencement of this

action was and still is the owner and holder of the said last mentioned coupon.

Forty-fourth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 124.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable and its payment demanded, the said coupon has
50 not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Forty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says, that annexed to bond number 124, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 124.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly
51 presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Forty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 124.

52 W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid and the said Town of Thompson has neglected and refused to make any provision for his payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Forty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

53 Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 124.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Forty-eight. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 124, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

54 $35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty five dollars, for interest due that day on bond No. 124.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Forty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says, that annexed to bond number 124 at the time of its issue, and accompanying it
55 at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 124.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fiftieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th 6th,
56 7th and 8th paragraphs of this complaint, further says that annexed to bond number 124 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 124.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fifty-first. The plaintiff, for a separate and distinct cause of action,

repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th,
57 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 125, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

58 Fifty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 125, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

59 Fifty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this ac-
60 tion, was, and still is, the owner and holder of the said last mentioned coupon.

Fifty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says, that annexed to bond number 125, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this ac-
61 tion, was, and is, the owner and holder of the said last mentioned coupon.

Fifty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says, that annexed to bond number 125, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon, in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid,
and the said town of Thompson has neglected and refused to make
62 any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fifty sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 125 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been
63 paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fifty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 125 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 125.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly
64 presented for payment at the said Hanover National Bank, where

it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fifty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

65 That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Fifty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty five dol-
66 lars for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Sixtieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to

bond number 126, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the
67 City of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

Sixty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

68 COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the City of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provi ion for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of said last mentioned coupon.

Sixty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126, at the time of its issue and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words
69 figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the City

of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

Sixty-third. The plaintiff, for a separate and distinct cause of
70 action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 126, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of said last mentioned coupon.

71 Sixty-fourth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint further says, that annexed to bond number 126, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid,

and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

72 Sixty-fifth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint further says, that annexed to bond number 127, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 127.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

73 Sixty-sixth. The plaintiff for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th, paragraphs of this complaint further says, that annexed to bond number 127, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 127.

W. H. CADY,
Commissioner.

That although thesaid last mentioned coupon has been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action, he was and still is the owner and holder of the said last mentioned coupon.

74 Sixty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127, at the time of its issue, and accom-

panying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond number 127.

W. H. CADY.
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

75 Sixty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint further says that, annexed to bond No. 127, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 127.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment, at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

76 Sixty-ninth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says, that annexed to bond No. 127, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the

city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 127.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

77 Seventieth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 127 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 127.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

78 Seventy-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 127, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 127.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

79 Seventy-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of the complaint, further says that annexed to bond number 128, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and it' payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

80 Seventy-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action,

was, and still is, the owner and holder of the said last-mentioned coupon.

81 Seventy-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

82 Seventy-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

83 Seventy-sixth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128, at the time of its issue, and accompany-

ing it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

84 Seventy-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 128, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

85 Seventy-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 128, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 128.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its paym ent demanded, the said coupon has not been paid, and the said town of Thom pson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

86 *Sixty*-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That at the time of the commencement of *of* this action was and still is the owner and holder of the said last-mentioned coupon.

87 Eightieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented

for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

88 Eighty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

89 Eighty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action

was, and still is, the owner and holder of the said last-mentioned coupon.

90 Eighty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond numbered 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

91 Eighty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

92 Eighty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 129 at the time of its issue, and accompany

ing it at the time of its purchase by the plaintiff, was a coupon in the words and figures following.

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 129.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

93 Eighty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 130.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

94 Eighty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint further says, that annexed to bond number 130 at the time of its issue and accompanying it at the time of its purchase by the plaintiff was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city

of New York on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 130.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

95 Eighty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 130.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

96 Eighty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 130.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly pre

sented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

97 Ninetieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 130.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and that said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

98 Ninety-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 130 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 30.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action

was and still is the owner and holder of the said last-mentioned coupon.

99 Ninety-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that, annexed to bond number 130, at the time of its issue, and accompanying it at the time of the time of its purchase by the plaintiff, was a coupon in the words and figures following :

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due on that day on bond No. 130.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

100 Ninety-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th, paragraphs of this complaint, further says that annexed to bond No. 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following :

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

101 Ninety-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accom-

panying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

102 Ninety-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

103 Ninety-six. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of September, 1873, thirty five dollars, for interest due that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

104 Ninety-seven. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

105 Ninety-eight. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been

paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

106 Ninety-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 138 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty five dollars, for interest due on that day on bond No. 138.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last-mentioned coupon.

107 One-hundredth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

108 One hundred & first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d,

3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon had been duly presented for payment at the said Hanover National Bank where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

109 One hundred and second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented at the said Hanover National Bank, where it was made payable and its payment demanded, the said coupon has never been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of commencement of this action was, and still is, the owner and holder of this last mentioned coupon.

110 One hundred and third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

111 One hundred and fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures as follows:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

112 One hundred and fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

113 One hundred and sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 139, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 139.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

114 One hundred and seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 140, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

115 One hundred and eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 140, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last-mentioned coupon.

116 One hundred and ninth. The plaintiff for a separate and distinct cause, of action repeating the allegations contained in the 1st, 2d 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 140, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, 35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commission r.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action,

was, and still is, the owner and holder of the said last-mentioned coupon.

117 One hundred and tenth. The plaintiff for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 140, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this suit, was, and still is, the owner and holder of the said last-mentioned coupon.

118 One hundred and eleventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 140 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN.

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

119 One hundred and twelfth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint further says that annexed to bond number 140 at the time of its issue

and accompanying it at the time of its purchase by the plaintiff was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN.

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

120 One hundred and thirteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 140, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 140.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

121 One hundred and fourteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

122 One hundred & fifteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars for interest that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

123 One hundred & sixteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of the complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the

city of New York, on the first day of March, 1873, thirty-five dollars for interest due that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

124 One hundred & seventeenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it, at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the *the* owner and holder of the said last mentioned coupon.

125 One hundred & eighteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly pre-

sented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

126 One hundred & nineteenth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

127 One hundred & twentieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 141, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 141.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

128 One hundred & twenty-first. That the plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank at the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time and commencement of this action, was and still is the owner and holder of this last mentioned coupon.

129 One hundred & twenty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank at the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

130 One hundred & twenty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last mentioned coupon.

131 One hundred & twenty-fourth. The plaintiff, for a separate nad distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

132 One hundred & twenty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a cou n in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

133 One hundred & twenty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was and still is the owner and holder of the said last-mentioned coupon.

134 One hundred & twenty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 142 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35] THE TOWN OF THOMPSON, [35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the 1st day of March, 1875, thirty-five dollars, for interest due that day on bond No. 142.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented

for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

135 One hundred & twenty-eighth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

136 One hundred & twenty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the 1st day of September, 1872, thirty-five dollars, for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

137 One hundred & thirtieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st,

2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond No. 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

[$35. THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commence ment of this action was and still is the owner and holder of the said last-mentioned coupon.

138 One hundred & thirty first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

139 One hundred & thirty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

140 One hundred & thirty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon of the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

141 One hundred & thirty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 143 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city

of New York, on the first day of March, 1875, thirty five dollars, for interest due that day on bond No. 143.

W. H. CADY,
Commissioner.

That alt hough the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to made any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

142 One hundred and thirty-fifth. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 144.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

143 One hundred & thirty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 8th paragraphs of this complaint, further says that annexed to bond No. 144, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 144.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was

made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

144 One hundred and thirty-seventh. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day an bond No. 144.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National , where it was made payable, and it' payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was, and still is, the owner and holder of the said last mentioned coupon.

145 One hundred and thirty-eight. The plaintiff, for a separate and distinct cause , repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144, at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 144.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff, at the time of the commencement of this action, was, and still is, the owner and holder of the said last mentioned coupon.

146 One hundred and thirty-ninth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 144.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the last-mentioned coupon.

147 One hundred & fortieth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank, of the city of New York, on the first day of September, 1874, thirty-five dollars for interest due that day on bond No. 144.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

148 One hundred & forty-first. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 144 at the time of its issue and accompanying it at the time of its purchase by the plaintiff was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 144.

W. H. CADY,
Commissioner

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

149 One hundred & forty-second. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8 paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue and accompanying it at the time of its purchase by the plaintiff was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and is the owner and holder of the said last-mentioned coupon.

150 One hundred & forty-third. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

151 One hundred & forty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

152 One hundred & forty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

153 One hundred & forty-sixth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city New York, on the first day of March, 1874, thirty-five dollars for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Hanover National Bank has neglected and refused to make any provision for its payment.

That the said plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

154 One hundred & forty-seventh. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

155 One hundred & forty-eighth. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint,

further says that annexed to bond number 145 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON. [$35.

COUNTY OF SULLIVAN,

Will pay to bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars, for interest due that day on bond No. 145.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the last mentioned coupon.

156 One hundred & forty-ninth. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

146.

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1872, thirty-five dollars, for interest due that day on bond No. 146.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

157 One hundred & fiftieth. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1872, thirty-five dollars, for interest due that day on bond No. 146.

W. H. CADY,
Commissioner.

That although the said last mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last mentioned coupon.

158 One hundred & fifty-first. The plaintiff, for a separate and distinct cause of of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1873, thirty-five dollars, for interest due that day on bond No. 146.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

159 One hundred & fifty-second. That the plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1873, thirty-five dollars, for interest due that day on bond No. 146.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

160 One hundred & fifty-third. The plaintiff, for a separate and distinct cause of action repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1874, thirty-five dollars, for interest due that day on bond No. 146.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

161 One hundred & fifty-fourth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of September, 1874, thirty-five dollars, for interest due that day on bond No. 126.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said Town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action

was and still is the owner and holder of the said last-mentioned coupon.

162 One hundred and fifty-fifth. The plaintiff, for a separate and distinct cause of action, repeating the allegations contained in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th paragraphs of this complaint, further says that annexed to bond number 146 at the time of its issue, and accompanying it at the time of its purchase by the plaintiff, was a coupon in the words and figures following:

$35.] THE TOWN OF THOMPSON, [$35.

COUNTY OF SULLIVAN,

Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of March, 1875, thirty-five dollars for interest due that day on bond No. 146.

W. H. CADY,
Commissioner.

That although the said last-mentioned coupon has been duly presented for payment at the said Hanover National Bank, where it was made payable, and its payment demanded, the said coupon has not been paid, and the said town of Thompson has neglected and refused to make any provision for its payment.

That the plaintiff at the time of the commencement of this action was and still is the owner and holder of the said last-mentioned coupon.

163 Wherefore the plaintiff demands judgment against the defendant for the sum of $5,145, with interest on 735 thereof from the 1st day of March, 1872; on 735 thereof from the 1st day of September, 1872; on 735 thereof from the 1st day of March, 1873; on 735 thereof from the 1st day of September, 1873; on 735 thereof from the 1st day of March, 1874; on 735 thereof from the 1st day of September, 1874; on 735 thereof from the 1st day of March, 1875, and the costs and disbursements of this action.

JAS. K. HILL,
Plaintiff's Attorney.

164 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Orlando Perrine, the plaintiff herein, being duly sworn, says the foregoing complaint is true of his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

ORLANDO PERRINE.

Sworn to before me this 11th day of April, 1876.

EDWARD L. OWEN,
U. S. Commissioner for the Southern Dist. of New York.

(Endorsed:) United States circuit court, southern district of New York. Orlando Perrine against The Town of Thompson, in the County of Sullivan. Complaint. James K. Hill, plaintiff's attorney, 62 Wall st. C. L. D., No. 4, p. 121. Filed May 1st, 1876.

165 United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan.

1st. The defendant above named, by T. F. Bush, its attorney, in answer to the plaintiff's complaint herein, denies each and every allegation in the said complaint not hereinafter expressly admitted or answered unto.

2d. In further answering, the defendant alleges that this court has not jurisdiction of this action. That the bonds and coupons referred to in the complaint were each and all of them issued without authority in law and in violation of chapter 553 of the law of New York for 1868, referred to in said complaint, and were defective and void, as is more fully hereinafter set forth. That the same were held and owned by persons residing in the State of New York at the time they were transferred to the plaintiff, and that the plaintiff purchased and took them, and each and every of them, by assignment from said persons residents of the State of New York as aforesaid, who could not maintain
166 an action thereon in this court, and that the said bonds and coupons were not negotiated to the plaintiff under or by the law merchant, but that the plaintiff at the time of the purchase and assignment thereof had a knowledge of the defects and of the illegal issue of the said bonds hereinafter set forth. Wherefore the def't alleges that under the provisions of an act of the Congress of the United States, approved March 3d, 1875, this court has no jurisdiction of the action.

3d. In further answering, the defendant alleges that each and all of the acts of the legislature of the State of New York, referred to in the second item of said complaint, and also the act of the said legislature, referred to in the sixth item of the said complaint, passed April 28, 1871, were passed by the said legislature in violation of the provisions of the constitution of the State of New York, and are therefore unconstitutional and void, and that all proceedings had under the said several acts are void and of no effect.

4th. In further answering, the defendant specifically denies that Nathan S. Hamelton, William H. Cady, and Giles M. Benedict, or any of them, were ever appointed commissioners of the said Town of
167 Thompson under the provisions of said act. Also denies the said alleged commissioners or any of them had any authority to issue the bonds of the said Town of Thompson; also denies that the bonds and coupons referred to in the complaint were issued by the procurement, consent, or with the knowledge of this defendant; also denies that the defendant in any manner ever ratified or confirmed the issue of the said bonds either by the payment of interest thereon or in any other manner.

5th. In further answering, the defendant alleges that in and during the year 1869 the said Giles M. Benedict, Nathan S. Hamelton, and William H. Cady, assuming to act as commissioners of the said town, but without a shadow of authority therefore, did execute the bonds set forth in the complaint; that at the time they so executed the same, the consents of the taxpayers of the said town had not been obtained and filed in conformity to the said act of the legislature of the State of New York, and that the said pretended commissioners issued the said

bonds and exchanged them for the stocks of the Monticello and Port Jervis Railroad Co., and did not sell them for cash and at par, as required by the provisions of the said act of the legislature of the
168 State of New York, passed May 4th, 1868, and of which illegal issue the pl'ff had knowledge.

6th. In further answering, the defendant alleges that each and every of the said bonds and coupons issued as aforesaid by the said pretended commissioners including the bonds and coupons referred to in the complaint, were adjudged void and of no effect, and the stock of the said R. R. Co., which was subscribed for by the said commissioners was cancelled and surrendered to the said R. R. Co. by a judgment of the supreme court of the said State of New York, in an action in which the people of the said State were parties plaintiffs and brought by the attorney-general of said State against Giles M. Benedict & others, commissioners, &c., and ag'st the said town of Thompson, and others, the judgment roll whereof was filed and the decree entered and judgment docketed in the clerk's office of the county of Sullivan, in the said State of New York, on the 4th day of December, 1872.

7th. In further answering, the defendant admits that it is one of the towns in the county of Sullivan, State of New York.

Wherefore the defendant demands that the said complaint be dismissed with costs.

T. F. BUSH,
Attorney for Def't.

169 STATE OF NEW YORK,
Sullivan County, ss:

Charles T. Kilbourne, of said county, being duly sworn, says that he is the supervisor of the town of Thompson, in the county of Sullivan, and that the foregoing answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

C. T. KILBOURNE.

Subscribed & sworn before me this 10th day of June, 1876.
[L. S.] L. N. STANTON,
County Clerk, Sull. Co., N. Y.

(Endorsed:) U. S. circuit court. Orlando Perrine ag'st the town of Thompson. Def't's answer. T. F. Bush, Def't's atty, Monticello, N. Y. C. L. D., No. 4, p. 121. Filed June 20, 1876.

170 *Judgment.*

United States circuit court for the southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan & State of New York.

The issues in this action having been brought on trial before Mr. Justice Shipman and a jury, at a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on Wednesday, the twenty-second day of May, in the year of our Lord one thousand eight hundred and seventy-eight, and the issues having

been tried, and a verdict for the plaintiff having been duly rendered by direction of the court on the twenty-second day of May, 1878, and the plaintiff's costs having been adjusted by the clerk of the court at the sum of one hundred and thirty-eight $\frac{16}{100}$ dollars:

Now on motion of James K. Hill, plaintiff's attorney, it is adjudged that the plaintiff, Orlando Perrine, recover of said defendant, The
171 Town of T'ompson, in the county of Sulilvan, and State of New York, six thousand eight hundred and forty-six and $\frac{70}{100}$ dollars found by the jury, with one hundred and thirty-eight & $\frac{16}{100}$ dollars costs, and one hundred and twenty-seven & $\frac{79}{100}$ dollars interest on the verdict, making in all the sum of seven thousand one hundred and twelve $\frac{65}{100}$ dollars, and that he have execution therefor.

Judgment signed this 29 day of August, A. D. 1878.

J. M. DEUEL.
Dep. Clerk.

Verdict, $6,846.70; costs, 138.16; interest on v'd'ct, 127.79—$7,112.65.

(Endorsed:) U. S. circuit court, southern dist. of New York. C. L. D. No. 4, p. 121. Orlando Perrine against The Town of Thompson. Judgment record. James K. Hill, pl'ff's att'y, No. 37 & 39 Wall st., N. Y. U. S. circuit court. Filed Aug. 29, 1878. John I. Davenport, clerk.

172 *Bill of exceptions.*

United States circuit court, southern district of New York.

ORLANDO PERRINE
against
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan, State of New York.

The pleadings will form a part of the judgment roll, to which reference is made.

The cause was brought to trial before the Hon. Nathaniel Shipman, duly designated to hold the circuit court for the southern district of New York, and a jury, at a circuit court, held in the city of New York, for the southern district of New York, on the 21st day of May, 1878, upon which trial the following evidence and proceedings were had:

The plaintiff puts in evidence statutes of the State of New York, as follows: Chapter 553 of the laws of 1868; chapter 96 of the laws of 1869, and chapter 809 of the laws of 1871. Of which said several
173 statutes the following are correct copies:

174 CHAPTER 553.

AN ACT to authorize certain towns, in the counties of Sullivan and Orange, to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County.

Passed May 4, 1868; three-fifths being present, without the approval of the governor.*

The people of the State of New York, represented in the senate and assembly, do enact as follows:

SECTION 1. On the application, in writing, of twelve or more freehold-

* Pursuant to the last clause of section nine, article four of the constitution of the State of New York.

ers, residents of any town or incorporated village, in either of the counties of Sullivan or Orange, situated along the route of the railroad from Monticello, in the said county of Sullivan, to Port Jervis, in the county of Orange, it shall be the duty of the county judge of the county in which such town or incorporated village is situated, within ten days after receiving such application, to appoint, under his hand and seal, not more than three freeholders, residents of said towns or incorporated villages respectively, to be commissioners thereof, to carry into effect the purposes and provisions of this act, who shall hold their offices respectively for the term of two years, and until others shall be appointed.

§ 2. It shall be lawful for said commissioners to borrow, on the faith and credit of their respective towns and villages aforesaid, such sum of money, not exceeding thirty-three per cent. of the valuation of said town, to be ascertained by the assessment rolls thereof, respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor under their hands and seals respectively. The bonds so to be executed may be in such sums, and payable at such times and places, not exceeding thirty years, and in such form as the said commissioners and their successors may deem expedient; but no such debt shall be contracted, or bonds issued by said commissioners, of or for either of said towns or villages, until the written consent shall have been obtained of a majority of the taxpayers of such town or incorporated village, or their legal representatives, appearing upon the last assessment roll, as shall represent a majority of the taxable property (not including lands owned by non-residents) appearing upon the last assessment roll of such town, nor until an amount of the capital stock of said road shall have been subscribed and paid for by individuals or corporations, equal to fifteen per cent. of all amounts of town bonds issued, or to be issued, in aid of said railroad under this act; such consent shall state the amount of money authorized to be raised in such town or village, and the railroad company in the stock of which said money shall be invested, and shall be proved or acknowledged in the same manner as conveyances of real estate. The fact that the persons signing said consent are such a majority of the taxpayers of said town or village, and represent a majority of the taxable property of such town or village, not including lands owned by non-residents, shall be proved by the affidavit of one of the assessors, or the town clerk of such town, endorsed upon or annexed to such written consent, and the assessor or town clerk of such town is hereby required to perform such service. Such consent and affidavit shall be filed in the office of the clerk of the county in which such town or village is situated, and a certified copy thereof in the town clerk's office of such town, and the same, or a certified copy thereof by the county clerk, shall be evidence of the facts therein contained, and certified in any court of this State, and before any judge or justice thereof.

§ 3. The said commissioners authorized by this act may, in their discretion, dispose of such bonds or any part thereof, to such persons or corporations and upon such terms as they shall deem most advantageous for their said town, but not for less than par, and the money that shall be raised by any loan or sale of such bonds shall be invested in the stock of such company now organized, or that may hereafter be organized, within two years after the passage of this act, for the purpose of building or aiding in the building of a railroad from the village of Monticello, through the towns of Thompson, Forestburgh, and Deerpark to Port Jervis, in the county of Orange; and said money shall be ap-

plied and used in the construction of such road as aforesaid, its buildings and necessary appurtenances, and for no other purpose. The commissioners respectively, in the corporate name of each of their said towns or villages aforesaid, may subscribe for and purchase stock of such company to the amount they may have severally borrowed as aforesaid, and by virtue of their said subscription or purchase of stock, and upon receiving certificates or the transfer of certificates for the amount of said stock so subscribed for and purchased by them, the said towns or villages shall acquire all the rights and privileges, and be liable to the same responsibilities as other stockholders of said company; and it shall be lawful for the commissioners provided for in this act, or either of them, with the consent of the others, or a majority of said commissioners, to participate in and to act in all the regular and legally authorized meetings of the stockholders, and either of them may act as directors of such company, if he shall be duly elected as such.

§ 4. The said commissioners respectively authorized by this act shall report to the board of supervisors of their respective counties within three days after the commencement of their regular annual meeting in each year, the amount required to pay principal or interest, if any, on the said bonds authorized to be issued under and by virtue of this act, due or to become due and payable during the next ensuing year. The dividends arising from the stock so subscribed for and purchased by said town or village, in pursuance of this act, or so much thereof as may be necessary, shall be received by said commissioners, and by them applied to the payment of the interest which shall, from time to time, accrue upon the bonds authorized by this act, and in case such dividends shall not be found sufficient in any one or more years to pay the
175 principal or interest accruing on said bonds due and to become due as aforesaid, it shall be and is hereby made the duty of the said board of supervisors, and they are hereby authorized and required to cause to be assessed and levied and collected of the real and personal property of said towns, at the same time and in the same manner as other taxes are assessed, levied, and collected, such sum or sums of money as shall have been reported to said board of supervisors by the said commissioners authorized by this act, to be necessary to make good such deficiency in the payment of the said principal or interest on the said bonds, and the same, when collected, shall be paid to said commissioners respectively, and by them applied to the payment of the principal and interest on said bonds, or so much thereof as shall remain unpaid after the application of said dividends to that purpose.

§ 5. It shall be lawful for such railroad company to agree with the said commissioners respectively, in behalf of their said town or village, to pay the annual interest accruing on the bonds issued by said towns or villages for the term of three years, or until such railroad shall be completed and in operation. The amount of such interest to be repaid by the said commissioners to such company within three years after said road shall have been opened and put in operation, in equal annual installments, to be levied and raised in the same manner as provided by this act for paying the annual interest accruing on said bonds, or by the sale of the stock as herein provided, in case the dividends or income from the stock held by such towns and villages, or either of them, shall be insufficient for the purpose.

§ 6. The said commissioners appointed under and by virtue of this act, may, at any time after acquiring such capital stock, exchange the same, in whole or in part, for the bonds issued under the authority of this act; and in such case they shall cancel the bonds so received by

them, or they may dispose of such stock, in their discretion, to any purchaser or purchasers for cash; but shall not sell or dispose of such stock at less than par, except at public sale, of which twenty days' notice shall be given in two newspapers published in their respective counties. But no such sale shall be made, except by consent obtained to the extent and in the manner provided in the second section of this act. And in case of sale of said stock, either at public or private sale, the proceeds thereof shall be applied by said commissioners respectively, to the purchase or redemption of the bonds authorized to be issued by this act, and for no other purpose.

§ 7. After thirty years from the passage of this act, it shall be, and is hereby, made the duty of the said board of supervisors, and they are hereby authorized, unless the payment of the said bonds is otherwise provided for, to cause to be assessed, levied and collected on the real and personal property of each of said towns or villages at the time and in the manner as other taxes are assessed, levied and collected, the sum due on the said bonds so issued in pursuance of this act, together with the interest on said principal sum, or so much thereof as may remain unpaid by reason of the deficiency of the dividends and sale arising from the said stocks. The amount so to be raised by the said board of supervisors, for the payment of the principal or interest, shall be determined by the report of said commissioners respectively, to the said board of supervisors, as hereinbefore authorized by this act.

§ 8. The said commissioners may also provide, within five years from the time of issuing said bonds, for the annual payment of at least five per cent. of the same, so as to insure the final liquidation of said bonds within thirty years after their date, and for that purpose they shall receive and apply annually the surplus dividends on the stock held by said towns or villages over the amount necessary to pay the annual interest on said bonds; and if the amount of such surplus dividends is not sufficient for the annual payment of the said five per cent., and the said commissioners shall not have received sufficient from the sale of stock, as herein provided, to pay the same, then the deficiency shall be reported by the said commissioners to the board of supervisors, to be levied and raised annually, in the manner herein provided, for paying the interest on said bonds.

§ 9. Before the said commissioners, or either of them, shall enter upon the discharge of their duties under this act, they shall jointly and severally, with two or more sureties, execute to the supervisor of their respective towns, or the trustees of any such incorporated village respectively, a bond in the penal sum equal to the amount of bonds issued by said towns or villages under and by virtue of this act, conditioned for the faithful discharge of their duties as commissioners under this act, and for the just and honest application by them of all moneys, stocks, or bonds issued by them or coming into their hands, according to the true intent and meaning of this act. The sufficiency of said sureties shall be determined by the county judge of the county in which such town or village is situated, to be endorsed on said bonds. The said bonds shall immediately thereafter be deposited with the supervisor of each of said towns, or trustees of such village, to be collected by him or them, or his or their successors in office, for the use and benefit of said town or village, in case the said commissioners, or either of them, are guilty of such a breach of duty or malfeasance in office as to render said bond collectable.

§ 10. In case a vacancy shall happen, by reason of death, removal from office, or from said town, resignation or refusal to serve of either of said

commissioners, provided for in th is act, the vacancy shall be filled by the remaining commissioners of the town or village in which the vacancy so exists, by appointment in writing to be deposited with the supervisor of said town. Each and every person thus appointed shall, before he enters upon the discharge of his duties, execute and deliver to said supervisor a bond in like amount, with like conditions and securities, as hereinbefore provided; and all provisions of this act shall apply to the successors of the commissioners provided for in this act, whose powers and duties and liabilities shall be the same as those of the commissioners first appointed under this act. Any commissioner may be removed for cause shown, by the county judge of the county in which he was appointed; and upon such notice being given as said county judge may direct. No removal shall be made unless on the application of twelve freeholders of the town or village in and for which such commissioners shall be acting.

§ 11. Each of said commissioners shall receive the sum of three
176 dollars per day for each day actually engaged in the discharge of his duties under this act, and his necessary disbursements, to be audited and paid by the said town or village, the same as other town or village charges and expenses.

§ 12. The commissioners in each of said towns or villages shall constitute a board to act for these said towns or villages respectively, and a majority of said commissioners, in each of said boards, shall constitute a quorum to do any business authorized by this act. Such boards shall respectively keep a detailed record of all their proceedings, which record shall at all times be open to the inspection of any tax-payer in their town or village; and *and* also the holder of any bond issued by said commissioners under this act.

§ 13. On the expiration of the term of office of either of the commissioners provided for in this act, or of their successors, his place shall be filled in the manner provided in the first section of this act. And the commissioners so appointed, as well as those to be appointed under the tenth section of this act, shall be freeholders of the town for which they are to act as such commissioners.

§ 14. All bonds issued in accordance with the provisions of this act shall be registered in the office of the county clerk of the county in which the town or village issuing the same is situated, and the words "registered in the county clerk's office" shall be printed or written across the face of each bond, attested by the signature of the county clerk when so registered, and no bond shall be valid unless so registered.

§ 15. It shall be lawful for said railroad company now organized or to be organized under the laws of this State, in the construction of said railroad, to use in operating said road a rail not less in weight than forty pounds to the lineal yard.

§ 16. This act shall take effect immediately.

CHAPTER 96.

AN ACT to amend an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May fourth, eighteen hundred and sixty-eight.

Passed April 2, 1869; three-fifths being present.

The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. Section two of chapter five hundred and fifty-three of the laws of eighteen hundred and sixty-eight is hereby amended so as to read as follows:

§ 2. It shall be lawful for said commissioners to borrow on the faith and credit of their respective towns and villages aforesaid such sum of money not exceeding thirty three per cent. of the valuation of said town, to be ascertained by the assessment rolls thereof respectively for the year eighteen hundred and sixty-seven, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefore under their hands and seals respectively. The bonds so to be executed may be in such sums and payable at such times and places not exceeding thirty years, and in such form as the said commissioners and their successors may deem expedient; but no such debt shall be contracted or bonds issued by said commissioners of or for either of said towns or villages until the written consent shall have been obtained of a majority of the tax-payers of such town or incorporated village, or their legal representatives, appearing upon the last assessment roll, as shall represent a majority of the taxable property, not including lands owned by non-residents, appearing upon the last assessment roll of such town, nor until an amount of the capital stock of said road shall have been subscribed for in good faith by individuals or corporations equal to fifteen per cent. of all amounts of town bonds issued or to be issued in aid of said railroad under this act, and ten per cent. thereof paid. Such consent shall state the amount of money authorized to be raised in such town or village, and the railroad company in the stock of which said money shall be invested, and shall be proved or acknowledged in the same manner as conveyances of real estate. The fact that the persons signing said consent as such majority of the tax-payers of said town or village, and representing a majority of the taxable property of such town or village, not including lands owned by non-residents, shall be proved by the affidavit of one of the assessors or the town clerk of such town indorsed upon or annexed to such written consent, and the assessor or town clerk of such town is hereby required to perform such service. Such consent and *and* affidavit shall be filed in the office of the clerk of the county in which such town or village is situated, and a certified copy thereof in the town clerk's office of such town, and the same, or a certified copy thereof by the county clerk, shall be evidence of the facts therein contained and certified in any court of this State and before any judge or justice thereof.

§ 2. This act shall take effect immediately.

CHAPTER 809.

AN ACT to legalize and confirm the acts of the commissioners of the towns of Thompson and Forestburgh, in the county of Sullivan, and of Deerpark, in the county of Orange, in issuing and disposing of the bonds of their respective towns, to build a railroad from the village of Monticello, in the county of Sullivan, to the village of Port Jervis, in the county of Orange, under chapter five hundred and fifty-three of the laws of eighteen hundred and sixty-eight, and to legalize and confirm all bonds heretofore issued by such commissioners under said chapter of laws now held by or owned by bona fide purchasers.

Passed April 28, 1871; three-fifths being present.

177 The people of the State of New York, represented in senate and assembly, do enact as follows:

SECTION 1. The acts of Nathan S. Hamilton, Giles M. Benedict, and William H. Cady, commissioners on the part of the town of Thompson, and Silas T. L. Norris, Edwin Hartwell, and James Ketcham, commis-

sioners of the town of Forestburgh, in the county of Sullivan, and of Orville J. Brown, Samuel O. Dimmick, and Augustus B. Goodale, commissioners of the town of Deerpark, in the county of Orange, appointed in pursuance of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis," passed May fourth, eighteen hundred and sixty-eight, in issuing bonds upon the faith and credit of their respective towns, and in exchanging them for the stock of the company, organized for the purpose of constructing the railroad contemplated by said act, are hereby ratified and confirmed.

§ 2. No bond or bonds issued or purporting to have been issued under the said act, and now held, owned, or possessed by any person or persons, guardian, trustee, or corporation, in good faith or for a valuable consideration, shall be void or voidable by reason of any defect or omission in the consents in writing, of the tax-payers of the said towns of Thompson, Forestburgh, and Deerpark, upon which such bonds were or purport to have been issued in or by reason of said consents, not stating the name of the railroad company in which the tax-payers so signing such consents desired the bonds or the money arising from the sale thereof to be invested. But that the said bonds shall be as valid and effectual for every purpose as if such defect or ommission had not occurred, provided, that such or any exchange of bonds by said commissioners for the stock of said company was made at the par value of the said bonds; and provided further, that the respective issues of the said bonds by their commissioners do not exceed the amount authorized by said act.

§ 3. No action or proceeding at law, commenced or pending at the time of the passage of this act, shall abate or be discontinued, or be in any way affected by reason thereof; but the same may be prosecuted or defended and judgment entered therein, and all proceedings taken to enforce the same, in the same manner as now provided by law, and with like effect as if this act had not been passed.

§ 4. This act shall take effect immediately.

178 The plaintiff's counsel then read in evidence the following portions of the deposition of WILLIAM H. CADY, taken de bene esse, on behalf of the defendant before U. S. Commissioner John A. Osbourne, on the 17th day of May, 1878, as follows:

I reside in Monticello, town of Thompson, Sullivan County, and have since 1829. I was one of the first board of commissioners appointed under the act of March 4th, 1868, for the bonding of the town. Nathan S. Hamilton and Giles M. Benedict were the other commissioners appointed under that act by the county judge of Sullivan County. We were all appointed at one time and acted as the first board of commissioners under that act. That board issued 148 bonds of $1,000 each.

Cross-examined:

Fifty-nine coupons were attached to each of the bonds issued. The first was payable March 1st, 1870, and the others on the 1st of September and March in each year thereafter. The 147 coupons in suit are here shown the witness. The 147 coupons shown me were attached to

the bonds to which they refer; each coupon is numbered so as to correspond to the bond to which it belongs—refers.

179 The plaintiff's counsel then read in evidence the deposition of JOSEPH P. COOPER taken de bene esse on behalf of the plaintiff before U. S. Commissioner John A. Osbourne, on the 17th day of May, 1878, as follows:

I reside in the State of New Jersey. In 1869 I was secretary of the Atlantic Savings Bank and continued to act as such until 1876. That bank was organized under the laws of the State of New York and was doing business in the city of New York. In 1874 the name of the institution was changed to the Bond Street Savings Bank. In November, 1869, the Atlantic Savings Bank bought $50,000 in amount of the town of Thompson bonds at eighty-two and one-half cents on a dollar and the accrued interest, and paid for them by a check on the National Park Bank. I have the check and now produce it. Check offered and read in evidence as follows:

No. 1139.] NEW YORK, *November 25th*, 1869.

National Park Bank pay to the order of Vermilyea & Co. forty-three thousand two hundred forty-four $\frac{50}{100}$ dollars.

J. P. COOPER,
Secretary.

CHARLES B. BAILEY,
Treasurer.

180 Certified: The National Park Bank.

HULL, *Pres't.*

$43,244 $\frac{50}{100}$.

(Endorsed:) Vermilyea & Co.

We bought these bonds from Vermilyea & Co., bankers & brokers in the city of New York, who have been in that business more than twenty years and are in good standing. They were bought by the bank for an investment in the usual course of its business. All the coupons were attached to the bonds at that time and none of them were past due then. We had no notice at the time of the purchase that the validity of the bonds was questioned in any way. Nor of any defect or irregularity in their issue, nor of any litigation in regard to them. None of the officers of the bank as far as I know had any knowledge or notice of any of these things. Had no notice of the action brought by the att'y-general in the name of the people on the relation of Kilbourne and others. The first coupons matured in March, 1870; they were paid at the Hanover Bank. The second, third, and fourth coupons were also paid. Two of the bonds which were bought of Vermilyea & Co.
181 were bought for Sinclair Tousey and delivered to him the same day they were taken from Vermilyea & Co. Our bank sold eighteen of these bonds to Gulick and Van Kleeck in 1875. I brought an action in this court against the town and recovered a judgment on two coupons which I bought of Mr. Tousey; the action was tried about two years ago. The coupons on which I recovered in that action were taken from two of the bonds purchased from Vermilyea & Co.

Cross-examined:

The Atlantic Savings Bank bought the bonds Nov. 25th, 1869. Mr. Tousey was one of the trustees of the bank. It was talked and assented

to by the trustees who were present at a meeting of the board, that $50,000 of the bonds should be purchased, the bank to keep $48,000 and Mr. Tousey to take $2,000 of them. The negotiations were going on for some days; it might have been a couple of weeks before the bonds were purchased. I think I had seen one of the bonds in the bank; some days before the delivery of the bonds it was brought there as a sample to look at and it was represented as a sample of the Thompson town bonds.

182 At no time before the purchase was my attention called to the consents of the tax-payers of the town of Thompson upon which it was claimed the bonds had been issued. I did not go to the clerk's office of the county of Sullivan with a view of examining them. I took no steps to ascertain what the consents contained before we purchased. I had not examined the statute referred to in the bond. I don't know whether any officers of the bank went to examine the consents before the purchase. All of the officers of the bank including myself could read and write the English language.

The coupons upon which I recovered in the action tried before Judge Wallace were taken from Mr. Tousey's bonds. I bought the coupons outright. I purchased them from Mr. Tousey before the commencement of the action. I had the entire interest in them. I had no guarantee from Mr. Tousey. I did not purchase the bonds nor take any interest in them. Before I had purchased the two coupons from Mr. Tousey I had been informed of the action of the people on the relation of Kilbourne et. al. against Benedict and others.

Messrs. Gulick and Van Kleeck paid for the eighteen bonds bought by them seventy cents on a dollar. I never collected my judgment against the town Thompson.

183 WILLIAM H. SEYMOUR was sworn as a witness for the plaintiff, and testified as follows:

I have been employed in the Hanover Bank in the city of New York for twenty years. Our bank received for the purpose of paying interest on the Thompson town bonds, money as follows: Feb'y 4th, 1870, $8,633.30; August 31st, 1870, $5,180; December 30th, 1874, 10,360. These moneys were all used for that purpose. The bank paid out the money and took up the coupons. The first coupons paid we returned either, I think, to the bank at Port Jervis or to the supervisors of the county; can't say which. The bank holds the last coupons. They have not been returned to any one. It may be that the coupons were returned to the commissioners of the town and not to the supervisors. There has been no provisions for the payment of interest since the deposit in Dec., 1874. The money deposited in 1874 was to pay the coupons which became due in March and September, 1871, and was so used.

Cross-examined:

184 I can't say who deposited the third deposit at our bank; whether that came to us through a draft on the Port Jervis Bank or whether it was brought down by the commissioners themselves.

WILLIAM VAN KLEECK was sworn as a witness for the plaintiff and testified:

I have resided in the city of New York all my life. In 1869 I was a member of the firm of Gulick and Van Kleeck, grocers for twenty years in this city. We purchased some of the Thompson town bonds in 1869,

in September, from the National Bank of Port Jervis, at ninety cents on a dollar; paid cash for them. We purchased eight bonds at that time numbered 72, 73, 74, 75, 76, 28, 29, 30. All the coupons were attached to the bonds at that time; none were past due. We had not at that time any notice of what has been called the "Benedict suit." We had no notice of any irregularity in the bonds nor of any defense to them. On the 19th of February, 1875, we purchased eighteen of the bonds numbered 122 to 130, both inclusive, and 138 to 146, both inclusive, from the Atlantic Savings Bank. I think at that time it was the Bond Street Savings Bank. It was the same institution. The coupons of 1870 and 1871 had been detached; the rest of the coupons were attached. The coupons for 1870 & 1871 on the bonds we bought from the bank
185 at Port Jervis were paid at the Hanover Bank. I presented them and received the money. We sold the bonds at public auction at the exchange sales room, 111 Broadway, in New York, July 21st, 1875. Orlando Perrine, the plaintiff, became the purchaser. He purchased the eighteen bonds we bought of the savings bank and numbers 28, 29, 30 of the bonds we bought of the Port Jervis Bank. We were paid for them by the auctioneer. Orlando Perrine then resided and now resides at South Amboy, New Jersey.

Cross-examined:

At the time I purchased the bonds in 1869, I think I saw one of the bonds. I think one of them was shown to me as a sample for examination. I did not examine the statute referred to in the bonds, nor the consents of the tax-payers of the town of Thompson. I did not take any step to ascertain whether the statute referred to in the bond had been complied with.

The plaintiff then read and put in evidence 147 coupons, being the coupons set out in the complaint. These coupons are in the following form:

THE TOWN OF THOMPSON, } $35.

COUNTY OF SULLIVAN,

186 Will pay the bearer hereof, at the Hanover National Bank of the city of New York, on the first day of , thirty-five dollars, for interest due that day on bond No. .

W. H. CADY,
Commissioner.

It is here conceded as a matter of computation there was due upon the coupons, including interest to time of trial, $6,846.70.

The plaintiff here rested.

The defendant's counsel then read in evidence the residue of the deposition of WILLIAM H. CADY, as follows:

The bond now shown me, No. 63, is one of the number issued. They were all alike as to form and substance, all bear the same date, and are numbered from 1 to 148, both inclusive.

Bond No. 63 offered and read in evidence by defendant's counsel; a copy of the same is hereto annexed, marked Exhibit A.

Question. What did you do with the 148 bonds issued by you?

(Question objected to by plaintiff's counsel; objection overruled by the court.)

187 A. We exchanged them with the Monticello and Port Jervis Railway Company for an equal amount of the capital stock of that company.

Q. Did you sell any of the bonds issued by you for cash?

(Question objected to by plaintiff's counsel; objection overruled by the court.)

A. We did not.

Q. Did you deliver to the Monticello and Port Jervis Railway Company any money whatever, being the proceeds of these bonds or of any of them?

(Question objected to by plaintiff's counsel; objection overruled by the court.)

A. We did not. We did not issue any bonds except the 148 spoken of.

Q. Are you able to state the date of the delivery of these bonds to the railway company?

A. I am.

Cross examination:

At the time of the exchange of the bonds for stock, the commissioners subscribed to the capital stock of that railway company to the amount of $148,000, and the stock to this amount was issued and delivered to the commissioners. This exchange was made at the par value of the bonds. I ceased to be a commissioner in 1870. We were ap-

188 pointed on the 16th of May, 1868, for two years. Up to May, 1870, this railway stock remained in the hands of the commissioners, and we then handed it over to our successors. At the time of the delivery of the bonds to the railway company there were receipts taken for them. The bonds were delivered in two parcels. The receipts produced are the ones. Plaintiff's counsel offered and read the *the* receipts in evidence as follows:

$15,000.] OFFICE OF THE MONTICELLO &
PORT JERVIS RAILWAY CO.,
Port Jervis, May 4th, 1869.

Received from Giles M. Benedict and William H. Cady, commissioners of the town of Thompson, fifteen thousand dollars in bonds of said town, issued in aid of the construction of this road, said bonds, numbered 1 to 15 inclusive, of one thousand dollars each, dated May 1st, 1869.

For the company.

FRANCIS MARVIN,
Treasurer.

[U. S. revenue stamp cancelled.]

$133,000.] OFFICE OF THE MONTICELLO &
PORT JERVIS RAILWAY CO.,
Port Jervis, May 12th, 1869.

189 Received from Giles M. Benedict, Wm. H. Cady, and Nathan S. Hamilton, commissioners of the town of Thompson, one hundred and thirty-three thousand dollars in bonds of said town, issued in aid of the construction of this road, said bonds, numbered sixteen to one hundred and forty-eight, inclusive, of one thousand dollars each, and dated May 1st, 1869.

For the company.

E. W. FAIRCHILD,
Ass't Treasurer.

[R. S. cancelled.]

Some of the coupons were paid by the town. The coupons due in March, 1870, were paid. These were for ten months' interest. The coupons due September, 1870, and March and September, 1871, were paid; they were paid by a tax levied by the board of supervisors of the county of Sullivan. The commissioners reported to the board of supervisors in compliance with the act of the legislature. The Monticello and Port Jervis Railway Company built a road from Monticello to Port Jervis, through the towns of Thompson and Forestburgh, Sullivan County, and the town of Deerpark, Orange County. This is the
190 road described in the consent of the tax-payers. It was completed in January, 1871, and has been in operation ever since.

Redirect examination:

What I mean when I say the exchange was made at the par value of the bonds is that they were exchanged for stock in equal amounts. The town paid the interest on some of these bonds. The collector of the town collected the money and paid it to the commissioners, and the commissioners deposited the money in the Hanover Bank, New York, to meet the coupons. There was no officer of the town who participated in the raising of the interest money except the board of commissioners, town collector, and the supervisor acting in the board of supervisors of the county. The warrant issued by the board of supervisors to the town collector required that the collector should pay this interest money to the board of commissioners.

Recross-examination:

The first board of commissioners took part in the election of directors of the railway company, and their successors did. I can't be positive for how many years, but I think for four years at least.

191 The defendant called as a witness GULIEN A. PENDALL, who was sworn and testified as follows:

I am employed as deputy clerk in the clerk's office of Sullivan County; have acted in that capacity since January 1st, 1864. I have the consents which were filed in that office, signed by taxpayers of the town of Thompson. There were never any other consents filed. These consents were filed April 19th, 1869.

Defendant's counsel offered the consents and affidavits thereto annexed in evidence.

(Objected to by plaintiff's counsel; objection overruled by the court.)

Consents and affidavits thereto annexed read in evidence. A copy of the same is hereto annexed, marked Exhibit B.

The defendant's counsel then offered in evidence the judgment-roll produced by the witness from the Sullivan County clerk's office, in an action in the supreme court of the State of New York brought by the attorney-general of the State in the name of the people, on the relation of Charles T. Kilbourne and others, against Giles M. Benedict and others.

Plaintiff's counsel objects to the admission of the judgment-roll in evidence; objection overruled and judgment-roll admitted. A
192 copy of the same is hereto annexed, marked Exhibit C.

FRANCIS MARVIN was called and sworn as a witness for the defendant, and testified as follows:

I was treasurer of the Monticello and Port Jervis Railway Co., and

kept records of the company as such treasurer. I have the records in court. I am able to state the dates of the delivery of each parcel of the Thompson town bonds to me as treasurer of that company.

Defendant's counsel here offers to show that the bonds had not been delivered by the railway company to any purchaser at the time of filing the complaint in the case of The People ex rel. Kilbourne et al. against Benedict et al.

Plaintiff's counsel objected. The court excluded the evidence, to which ruling defendant's counsel then and there excepted.

Defendant's counsel then offered in evidence a certified copy of the articles of association of the Monticello & Port Jervis Railway Company, and it was admitted in evidence. A copy of the same is hereto annexed, marked Exhibit D.

193 CHARLES T. KILBOURNE was called and sworn as a witness for the defendant and testified as follows:

I am supervisor of the town of Thompson, the defendant, and have been for seven years last passed; and have been present and acted with the board of supervisors of the county of Sullivan each year during that time. There has been no money raised by a tax on the town of Thompson to pay interest on town bonds since 1870.

Defendant here rested.

Plaintiff's counsel then offered in evidence an undertaking given in the action of The People ex rel. Kilbourne et al. against Benedict et al.; also an injunction in that action and an order vacating the same; they were admitted in evidence, and a copy of the same is hereto annexed, marked Exhibit E.

The evidence here closed.

The defendant's counsel then requested the court to direct a verdict for the defendant on the following grounds:

First. The bonds and coupons in question were issued by the commissioners without authority in law, and in violation of the statute
194 under which said commissioners claimed to act, and they are therefore void.

Second. There being no recital in the bonds of any fact essential to their validity, and the bonds containing a reference to the statute and also containing a recital of the fact that they were issued in consideration of railroad stock, in violation of the statute referred to, the plaintiff was bound to take notice of the invalidity of the consents which had become a public record, and of the fact recited in the bonds that they were issued in violation of the statute, and he cannot therefore claim any protection as a bona fide holder of the bonds.

Third. The adjudication of the highest court of the State of New York giving a construction to the statute, and adjudging the acts of the commissioners in issuing the bonds to have been both ultra vires and malum prohibitum must be taken as the true interpretation of the statute, and of the acts of the commissioners.

Fourth. The provision of the statute of 1869, that the bonds should be issued only for cash and at par, and that money only should be paid to the railroad company for their stock, has been uniformly held by the highest court of the State to be an important provision, in view of the
fact that if bonds are exchanged directly for stock the town
195 and other stockholders of the road are not protected by any provision of the statute against a diversion of the bonds by the rail-

road company to ulterior purposes, nor against a squandering of the bonds by the company by the sale of them at a mere nominal sum, and the court is referred to the following decisions of the court of appeals of New York: Norton vs. Town of Thompson, not reported; People vs. Batchellor, 53 N. Y. R., 135; Starrin vs. Town of Genoa, 23 N. Y. R., 439; Gould vs. Town of Sterling, Id.

Fifth. The decisions of the court of appeals of the State of New York, that the act of 1871 is invalid, was rendered in view of all the restrictions of the State constitution, and upon well settled general principles, and is not in conflict with any decision of the Federal courts and should be taken as the true exposition of the limit of legislative power vested in the legislature of that State. The court is referred to art. 1, section 1 & 6; art. 7, section 12 of the State constitution, and to The People vs. Ingersoll, 58 N. Y. R., 29, 30.

Sixth. The judgment in the action of The People ag'st Benedict
196 et al. is binding upon all who purchased the bonds pendente lite, and the act of 1871 contains an exception with reference to the judgment in that action.

Furthermore, the act of 1871 can only be construed to validate bonds in the hands of bona fide holders; any other construction would render the act repugnant to section 17 of art. 3 of the State constitution.

The court denied the motion of defendant, to which ruling the defendant excepted.

Counsel for plaintiff then requested the court to direct a verdict for the pl'ff, to which defendant objected.

The court, there being no disputed question of fact in the case, directed the jury to render a verdict for the plaintiff for $6,846.70.

The jury rendered a verdict for the plaintiff as directed by the court, to which direction of the court and verdict the defendant duly excepted.

197 *Bond.*

EXHIBIT A.

UNITED STATES OF AMERICA, STATE OF NEW YORK.

COUNTY OF SULLIVAN, TOWN OF THOMPSON.

This bond is a valid security, being issued by virtue of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County; passed May 4th, eighteen hundred and sixty-eight, and of the act amendatory thereof, passed April 1st, eighteen hundred and sixty nine.

Know all men by these presents that the town of Thompson, in the county of Sullivan, and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the acts above en-
198 titled and referred to, and for value received in the stock of the Monticello and Port Jervis Railway Company, promise to pay the bearer the sum of one thousand dollars on the 1st day of May, in the year one thousand eight hundred and ninety-nine, at the National Union Bank of Monticello, N. Y., with interest at seven per cent. per annum, payable semi annually, on the 1st day of March and September in each year, at the Hanover National Bank of the city of New York, on the presentation and surrender of the coupons for such interest.

In witness whereof, we have hereunto set our hands and seals, and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this 1st day of May, in the year one thousand eight hundred and sixty nine.

G. M. BENEDICT,
N. S. HAMILTON,
W. H. CADY,
Comr's.

Registered in the county clerk's office of the county of Sullivan, this first day of May, 1869.

C. L. MORRIS,
County Clerk.

EXHIBIT B.

Consent and affidavit.

We, the undersigned, tax-payers of the town of Thompson,
199 county of Sullivan, and State of New York, in accordance with the provisions of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years from the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May 4th, 1868," do hereby consent that the commissioners appointed for the said town of Thompson, under and by virtue of the provision of said act, may borrow upon the faith and credit of the said town of Thompson, the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment roll of said town for the year 1867, at a rate of interest not exceeding 7 per cent. for a period not exceeding thirty years, and to execute therefor under their hands and seals the bonds of the said town of Thompson, and to do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid.

Dated May 16th, 1868.

(Here follows names of tax-payers.)

STATE OF NEW YORK,
County of Sullivan, ss:

200 James Brown, of the town of Thompson, in the said county, being duly sworn, deposes and says, that he is an assessor of the town of Thompson, Sullivan County, N. Y., duly elected and sworn as such. That the written and printed instrument to which this affidavit is annexed exhibits the consents of the tax-payers of said town of Thompson, to the borrowing on the faith and credit of said town, and to the issuing of bonds therefor pursuant to an act of the legislature of the State of New York, entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May 4th, 1868."

That the whole number of tax-payers of said town of Thompson, as-

sessed and appearing upon the assessment-roll of said town, of and for the year 1867, that being the last assessment-roll of said town, is seven hundred and twenty-three; that the whole amount of taxable property of said town appearing upon the last assessment-roll (the roll of
201 1867), not including lands owned by non-residents, is $420,648.

That the whole number of tax-payers, whose names appear upon the said assessment-roll, who have signed the said annexed consent, and whose names are appended thereto, is four hundred and twenty-four; that such number constitutes more than a majority of the tax-payers of said town, or their legal representatives appearing on the said roll. And that the whole amount of taxable property which the tax-payers or their legal representatives appearing on the said last assessment-roll represent, who have signed the said consent, is $224,138, and that such amount is more than one-half or a majority of the taxable property of said town (not including lands owned by non-residents) appearing on the said last assessment-roll, and that the consent of the tax-payers of said town, both as respects their number and the amount of taxable property which they represent as shown and appearing by the last assessment-roll of said town, has been obtained for the purpose aforesaid pursuant to the provisions of the act aforesaid.

JAMES BROWN.

Sworn to before me this 9th day of December, 1868.

D. G. STARR,
Justice of the Peace.

202 EXHIBIT C.

Summons.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stocks in any company now organized or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, the Monticello and Port Jervis Railway Company, and the town of Thompson, in Sullivan County, N. Y., defendants.

203 To the above-named defendants:

You are hereby summoned and required to answer the com-

plaint of the plaintiffs in this action, which is herewith served upon you, and to serve a copy of your answer on me, at the law office of Albert J. Bush, in the village of Monticello, Sullivan County, New York, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer said complaint as hereby required, the plaintiffs will apply to the court for the relief demanded in the complaint.

M. B. CHAMPLAIN,
Attorney-General, for Plaintiffs.

Complaint.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within
204 three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, the Monticello and Port Jervis Railway Company, and the town of Thompson, in Sullivan County, N. Y., defendants.

The people of the State of New York, upon the relation of Charles Kilbourne, Samuel Thompson, and all other tax-payers of the town of Thompson, and by their attorney-general, Marshall B. Champlain, complain of the defendants in this action, and allege that the defendants Giles M. Benedict, William H. Cady, and Nathan S. Hamilton are public officers and commissioners exercising corporate powers, and that they were duly appointed such officers and commissioners for the town of Thompson, in the county of Sullivan, and State of New York, by the county judge of said county, under and in pursuance of the provisions of an act of the legislature of the State of New York, passed the 4th day of May, 1868, and which act was afterwards approved by the governor of said State, and is entitled "An act to authorize certain towns
in the counties of Sullivan and Orange to issue bonds and take
205 stock in any company now organized or that may be hereafter organized within three years after the passage of this act, for the

purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, and that said defendants last named have entered upon the discharge of their duties under said act, and another act amending the same, passed April 21, 1869, being chapter 96, of laws of 1869; that in and by said acts it is made lawful for said commissioners to borrow, on the faith and credit of said town of Thompson, such sum of money as the tax-paying inhabitants of said town shall designate, not exceeding thirty-three per cent. of the valuation of said town, to be ascertained by the assessment rolls of said town for the year 1867, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor under their hands and seals; that said commissioners are expressly prohibited by said acts from contracting any such
206 debt, and from issuing any of said bonds of or for said town until the written consent shall first have been obtained of a majority of the tax-payers of said town, or of their legal representatives appearing upon the last assessment roll, as shall represent a majority of the taxable property of said town (not including lands owned by non-residents) appearing upon the last assessment roll of said town; which consents are required to be proved or acknowledged in the same manner as conveyances of real estate are proved or acknowledged, and said commissioners are also in and by said acts prohibited from borrowing any such money or contracting any such debt, and from issuing any of said bonds, until such consent shall be executed as aforesaid, and in which consents shall be expressed and stated the amount of money authorized to be raised in said town, and also the railroad company in the stock of which said money shall be invested.

That the fact that a majority of said taxpayers, representing
207 a majority of the taxable property of said town, as required by said act, has been obtained, is required to be proved by the affidavit of one of the assessors, or the town clerk of said town, endorsed upon or annexed to such written consents, and such consents and affidavit are required to be filed in the office of the clerk of Sullivan County, and a certified copy thereof in the town clerk's office of said town; and the same or a certified copy thereof by the county clerk are made evidence of the facts therein contained and certified in any court of this State, and before any judge or justice thereof.

The plaintiffs further allege that after the said consents have been obtained and filed as required by said acts, and after an amount of capital stock of said road shall have been subscribed for in good faith, by individuals or corporations equal to fifteen per. cent. of all amounts of town bonds issued in aid of said railroad company, and ten per cent. thereof paid, the said commissioners are by said acts authorized in their discretion to dispose of such bonds, or any part thereof authorized by said acts to be issued by them, to such persons or corporations and upon such terms as they shall deem most advantageous for their said town, but not for less than par; and the money thus raised is directed by said acts to be invested in the stock of said company as the
208 said taxpayers have in their said consents named and stated, organized at the time of the passage of the first-named act, or such company so named by said taxpayers in their consents, that may be thereafter and within two years organized, for the purpose of building or aiding in building a railroad from said village of Monticillo to Port Jervis, through the towns hereinbefore stated, and said commissioners are by

said acts authorized to subscribe for and purchase stock of such company to the amount of the money so loaned and borrowed by them, and upon receiving certificates therefor the said town of Thompson acquires all the rights and privileges, and becomes liable to the same responsibilities as other stockholders of such company; and it is made lawful for said commissioners or either of them, with the consent of the others, to participate in the meetings of the stockholders, and to act as directors if elected as such. The commissioners are by said acts required to report to the board of supervisors of said county of Sullivan, within three days after the commencement of their regular annual meeting in each year, the amount required to pay the principal or interest, if any, on the said bonds authorized to be issued under and by virtue of said acts due or to become due and payable during the next succeeding year.

The dividends arising from the stock so subscribed for and pur-
209 chased by said town, or so much thereof as may be necessary is to be received by said commissioners, and applied by them to the payment of the interest which shall from time to time accrue upon such bonds; and if such dividends prove insufficient in any one or more years, to pay the principal or interest accruing on said bonds, due or to become due, it is made the duty of the said board of supervisors to cause to be assessed, levied and collected on the real and personal property of said town of Thompson, at the same time and in the same manner as other taxes are assessed, levied and collected, such sum or sums as shall have been reported to the said board of supervisors by the said commissioners to be necessary to make good such deficiency; and when collected, it shall be paid to the said commissioners, and be by them applied to the payment of the principal and interest on said bonds, or so much thereof as shall remain unpaid after the application of said dividends to that purpose. And it is made lawful for such railroad company to agree with the said commissioners in behalf of said town to pay the annual interest accruing on such bonds for the term of three years, or until such road shall be completed and in operation, and the amount of such interest is to
210 be repaid by the said commissioners to such company within three years after said road shall be opened and put in operation, in equal annual installments, to be levied and raised in the same manner as provided by said act for paying the annual interest on said bonds, or by the sale of the stock as in said act provided, in case the dividends or income from the stock held by said town shall be insufficient for that purpose. And it is further provided by said acts, that after thirty years from the passage thereof, it shall be the duty of the board of supervisors of Sullivan County, unless the payment of said bonds is otherwise provided for, to cause to be assessed, levied, and collected on the real and personal property of said town of Thomson, at the time and in the manner as other taxes are assessed, levied, and collected, the sum due on the said bonds so issued in pursuance of said acts, together with the interest on said principal sum, or so much thereof as may remain unpaid by reason of the deficiency of the dividends and moneys arising from the sale of said stocks. The amount so to be raised by said board of supervisors for the payment of said principal sum, or the inter-
211 est, is to be determined by the said commissioners as hereinbefore stated.

The plaintiffs allege that in or about the month of December of the year 1868 the defendants, or some one or more of them, filed, or caused to be filed, in the county clerk's office of Sullivan County, a roll, bundle or package of papers, which they allege and claim contains the written consents of the majority of the tax-payers of the said town of Thompson,

owing or legally representing more than a majority of the taxable property of said town (excluding that of non-residents of said town) for the year 1867, to the borrowing on the faith and credit of the said town, and the issuing of bonds therefor to the amount of one hundred and forty-eight thousand dollars, in accordance with the provisions of the said acts as hereinbefore stated; that the said written and printed consents contained in said papers so filed bear date May 16, 1868, and were in fact made and signed by said tax-payers, and acknowledged by them during the said month of May, & immediately thereafter and before the month of September, 1868, and the names of the tax-payers and subscribers thereto are written under the written and printed consents, which said written and printed consents are in the following words and figures, to wit: "We, the undersigned tax-payers of the Town of Thompson, county of Sullivan and State of New York, in accordance
212 with the provisons of an act entitled 'An act to authorize certain towns in the counties of Sullivan & Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years from the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the towns of Deerpark, in the county of Orange, to Port Jervis, Orange County,' passed May 4, 1868, do hereby consent that the commissioners appointed for the said town of Thompson, under and by virtue of the provisions of said act, may borrow, upon the faith and credit of the said town of Thompson, the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment roll of said town for the year 1867, at a rate of interest not exceeding 7 per cent., for a period not exceeding thirty years, and to execute therefor, under their hands and seals, the bonds of the said town of Thompson, and to do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid, dated May 16, 1868."

213 To the said consents in the above form is written the names of four hundred & twenty-four persons and firms. The whole number of tax-payers appearing on the assessment roll of said town for the year 1867 is 723. The whole amount of taxable property represented by said names and firms who signed said consents is $224,138, and the whole amount of property appearing on the said assessment roll for 1867, excluding that of non-residents, is $420,648. That no other form of consent is filed in the said county clerk's office than the one above set forth, and it is upon the said described consents, and those only, that the said commissioners, defendants herein, claim to have executed and disposed of the bonds of said town of Thompson, as hereinbefore alleged.

And the plaintiffs further show and allege that the said consents of the said tax-payers do not state nor name, nor in any way designate or indicate, the railroad company in the stock of which said money shall be invested, nor do they in any manner name or allude to the said Monticello
214 and Port Jervis Railway Company: that at the time of signing said consents by said tax-payers the said Monticello and Port Jervis Railway Company was not organized, nor was any other railway or railroad company organized, for the purpose or with the intention of building a road or railway from Monticello to Port Jervis through the towns specified in said acts, or through any other towns, or on any other route or way. That the said defendant the Monticello and Port Jervis Railway Company was organized and became a corporation by filing their articles

of association in the office of the secretary of State of the State of New York, on the 2nd day of September, of the year 1868, and after the organization of said company no considerable numbers of said tax-payers, if any, signed said consents, nor did those, if any signed the same after that date, represented *ed* or own a quarter part of the taxable property of said town of Thompson (excluding that of non-residents) appearing on the said assessment-rolls of 1867.

And the plaintiffs further allege that the said defendants, the commissioners, have subscribed or pretended to subscribe in the corporate name of the said town of Thompson for the stock of said railway
215 company to the sum of one hundred and forty-eight thousand dollars absolutely, and have executed and delivered to the defendants, the said Monticello & Port Jervis Railway Company, the bonds of the said town of Thompson to the amount of $148,000 in payment for said stock, which said bonds are all issued in denominations of $1,000 each and number 148, and are signed by all said commissioners, and registered by the clerk of Sullivan County, in his office, and attested by his signature thereon, and are numbered from one to one hundred and forty-eight inclusive. Said bonds respectively bear date May 1, 1869, and the principal sum is made due and payable at the expiration of thirty years from said date, at the office of the said commissions in Monticello, and to each of which said bonds is attached coupons pledging the payment of interest at the rate of seven per cent. per annum semi-annually, on the first days of September and March of each year thereafter, at the National Hanover Bank of the city of New York, and each of which said coupons bear, in accordance with a resolution of the said board of commissioners, the name of William H. Cady, commissioner, as the signature thereto. That said bonds and coupons are engraved and executed in a form pledging the faith and credit of
216 the said town of Thompson to the payment of the same, as they mature and become payable as above stated. And the plaintiffs further allege that after the appointment of said commissioners by the county judge of Sullivan County, and after obtaining the written consents above specified, or a majority of said signatures thereto, the said commissioners with others got up and organized the said Monticello and Port Jervis Railway Company, to the stock of which each of said commissioners is an individual subscriber to the amount of $1,000, and is also a director of said company, and was made such director and is so named in the organization of said company.

And the plaintiffs further say that the said defendants, the Monticello and Port Jervis Railway Company, is an association and corporation formed under the laws of this State and were organized by filing their articles of association in the office of the secretary of state of the State of New York, on the 2nd day of September, in the year 1868, for the purpose of constructing, maintaining, and operating a railway for public use in the conveyance of persons and property from the village of Monticello, in the said county of Sullivan, to the said village of
217 Port Jervis, in the county of Orange, through the towns of Thompson, Forestburgh, and Deerpark aforesaid; which road is to be maintained and operated for ninety-nine years. That the capital stock named in the said articles of association is $500,000. That of said capital stock the commissioners of the town of Deerpark have taken or propose to take $200,000; the commissioners of the said town of Forestburgh $23,000; and the said commissioners of the town of Thompson $148,000, in behalf of their respective towns; and that individual and other corporations and firms have taken or propose to take about fifty

five thousand dollars, making a sort of actual capital stock made up of town bonds and other property to the nominal amount of $426,000.

And the plaintiffs further allege that the defendants, the said railway company, have gone on and surveyed and have partly located their line of road through the said towns from the village of Monticello to Port Jervis; and have negotiated and contracted with the defendants, F. C. Crowley, C. L. Colt, and William D. Colt, three gentlemen composing the firm of W. D. Colt & Co., by the terms of which contract the
218 said defendants, W. D. Colt & Co., undertake and promise to furnish the material and build and complete by the 1st day of June, 1870, said road from the said village of Monticello to the said village of Port Jervis, and to make and construct all necessary turnouts, switches, depot buildings, turn-tables, and other appurtenances thereto for the sum of six hundred and fifty thousand dollars, and to take and receive in payment therefor $25,000 in cash, $350,000 in said town bonds of the three towns herein named, and first mortgage bonds upon the said road for the residue of the $650,000, to be executed upon said road so soon as the same is located and advanced to a point where it is possible to mortgage the same. That the said defendants, W. D. Colt & Co., have gone on under said contract with the said railway company and are now building said road, and the said railway company have already delivered to them, the said W. D. Colt & Co., large sums of the said bonds of the said town of Thompson, and threaten to deliver and intend to deliver the residue of said bonds on said contract.

And the plaintiffs further say that the said defendants, Wm.
219 D. Colt & Co., have offered for sale and are now offering and advertising for sale through their broker, Wm. A. Guest, at 25 Wall st., New York City, the whole of the $148,000 of bonds so issued by the defendants, the commissioners, as aforesaid. That there is great danger that said bonds of the town of Thompson will be sold for value to bona-fide purchasers in good faith, and so become in the hands of such purchasers good and valid claims and obligations against the said town of Thompson, and as such collectable against said town, and the town liable to pay the same, unless the defendants are restrained and enjoined from using and selling the same by order and judgment of this court, and are also restrained and enjoined from using and selling the same and from borrowing or obtaining money thereon. And that the town of Thomson will, if said bonds are so sold or money borrowed thereon, be liable to many lawsuits arising upon said bonds by the holders and owners thereof, and put to great trouble, expense, and litigation. That all the defendants except the defendant the town of Thompson claim
220 that said bonds are now good and valid obligations against said town, and that they have rightfully and lawfully disposed of and are lawfully and rightfully disposing of the same; and unless the same are adjudged void by the judgment of this court, many lawsuits and much litigation will result from the attempt of said pretended holders and claimants to enforce the payment of said bonds and coupons against said town.

And the plaintiffs further say that none of said bonds have been sold by the defendants, the said commissioners, for cash, and no money has been borrowed thereon, but were unlawfully and fraudulently to said town exchanged for the stock of said railway company as aforesaid, and that none of the said defendants have purchased said bonds for cash at par, or for any other amount in money, or loaned any money thereon, and the plaintiffs allege and insist that said defendants nor

none of them are bona-fide owners or holders of said bonds, and that the same were and to the knowledge of all the defendants executed without any authority of law, upon insufficient and void consents of said taxpayers, and were unlawfully and fraudulently negotiated as here-
221 inbefore stated, and that all and every and each said bonds in the hands of defendants, or either or any of such defendants, is and are absolutely void and worthless. That each and every of said defendants well knew when said bonds were executed and delivered by the said commissioners as aforesaid that the said consents on which they were pretended to be issued were signed by nearly all said taxpayers before said railway company was organized, and that said consents did not contain nor state or in any way designate the Monticello and Port Jervis Railway Company, nor any other railway or railroad company in the stock of which the moneys in any way loaned on said bonds should be invested, and each and every of said defendants well knew at the time said bonds were executed that said acts of the legislature prohibited the execution and issuance thereof on consents which did not contain such statements, and that it was also unlawful for said commissioners to dispose of or sell said bonds except for cash and at least at a hundred cents on the dollar of their nominal value. And the *the* plaintiffs allege that there is no authority given by said acts to said commis-
222 sioners to sell, transfer, or dispose of said bonds or any of them for stocks in the said railway company, nor for any other property than money, or for a less sum than par.

The plaintiffs further allege that the said Monticello and Port Jervis Railway Company is irresponsible, and has but a small fraction of the money or property required to construct said road, independent from the bonds of the said three towns herein named; that the building of said road is projected upon the basis of such bonds, and contracted to be built on that basis and the project of mortgaging the bed of the road and the few thousand dollars' other subscriptions before stated; that there is no part of said road completed, and but a fractional part of the personal subscription to said stock is paid in to said company.

The plaintiffs further allege that the relators, Charles Kilbourne and Samuel Thompson, are taxpayers of said town of Thompson, as well as the other taxpayers on whose behalf the matters herein are related and set forth.

223 And the plaintiffs further allege that whether the defendants, commissioners and public officers aforesaid, and the other defendants, the said railway company, and the defendants Wm. D. Colt & Co., shall go on and use and dispose of said bonds, under the circumstances herein set forth, is a question in which every taxpayer in said town of Thompson at the present time, and every one who shall be a taxpayer of said town during any time said bonds shall be in existence and unpaid, is commonly interested, and the questions sought to be litigated in this action are common to all and every of said taxpayers, and the matters complained of, if suffered to be done, would work or cause no peculiar damage to the individual interests of the relators, Samuel Thompson and Charles Kilbourne, in which kind of damage the owners of real estate and the taxpayers in the said town would not also share. That the taxes levied for the payment of said bonds and coupons would be a public tax, in which all the taxpayers of said town would be included, and it is for the interest of the public gene-
224 rally, and of the whole people of the State of New York, that taxes should everywhere throughout said State be as light as possible, and that no part of the public, nor any town or district of the

State, should be taxed except when all the conditions upon which the right to tax depends have been complied with, and that no town or municipal organization, or corporation, should be involved in a multiplicity of lawsuits and litigations, growing out of the illegal and unauthorized action of public officers, exercising, as such officers and boards of officers, corporate powers and functions not authorized by law, or in a manner not so authorized by the statutes and laws of this State; that the defendants, the commissioners, are exercising, professedly on behalf of the defendant, the town of Thompson, corporate rights, privileges, and franchises not granted to them or the said town by any law of the State, and the defendants, the said railway company, in the acts herein alleged against them, in bartering stock for said bonds and transferring the same, are acting outside of their corporate powers, and assuming rights and privileges as a corporation in conflict with the laws of this State.

225 And the plaintiffs further say that it is claimed by some of the defendants, and particularly by the said commissioners, that the defendant, the Town of Thompson, has acquired a vested right to the stock subscribed for by the said commissioners, and a corresponding liability to pay said bonds. The plaintiffs pray the aid and judgment of this court that the said bonds executed by said commissioners, as herein stated, and each and every of said bonds, be declared void and of no effect or obligation against said town of Thompson, and that the same be by the defendants delivered up to the defendants, the commissioners; and that said commissioners deliver up to said railway company any and all certificates of stocks or other considerations received by them in consideration of said bonds; and that the court adjudge and determine that the defendant, the town of Thompson, has no interest in or title to any of said stock so subscribed for by the said commissioners as aforesaid, and that each, every, and all of the

226 defendants, their agents and officers, and all the agents and officers of either or any of them, and all persons acting under or for the defendants, or either or any of them, be forbidden and perpetually restrained and enjoined by the order and judgment of this court from using, loaning, or selling said bonds, or any of them; and that the defendants, the commissioners, be enjoined and restrained from executing any other bonds on behalf of their town upon the strength of the consents aforesaid, and until the necessary consents, as provided by said acts of the legislature, are obtained and filed in due form of law.

M. B. CHAMPLAIN,
Attorney-General, for Plaintiffs.

SULLIVAN COUNTY, *ss:*

Charles Kilbourne and Samuel Thompson, of the town of Thompson, in said county, being severally sworn, each for himself deposes and says that he has heard read the foregoing complaint, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

227 SAMUEL G. THOMPSON.
CHARLES KILBOURNE.

Sworn and subscribed before me June 14, 1869.

SETH H. ROYCE,
Justice of the Peace.

SULLIVAN COUNTY,
Sheriff's Office, ss:

I hereby certify that I served the within summons, complaint, order, & undertaking on Solomon W. Royce, supervisor of the town of Thompson, and on Giles M. Benedict, William H. Cady, & Nathan S. Hamilton, the commissioners within named & directors of the within railroad company, on the 2nd day of July, 1869, in the village of Monticello, in said county, by delivering to each of them a copy thereof & leaving the same with them respectively, & at the same time I showed to each of said defendants a copy of the original order of injunction & the signature of Justice Peckham thereto, & he further says, & on oath, being duly sworn, that he served in the same manner said comp't, summons, order, & undertaking on Samuel O. Dimick, the secretary of said railway co., at the town of Chester, Orange County, N. Y.,
228 on the 6th day of July, 1869, all of whom, the persons served as aforesaid, he knew to be the same individuals named as def'ts herein, and he served in like manner all the said papers on the def't, F. C. Crowley, at Monticello, aforesaid, on the 10th day of July, 1869, known to him also to be one of the def't.

B. W. WINNER,
Sheriff.

Sworn before me July 19, 1869.

A. J. BUSH, *Co. J.*

(Endorsed:) Supreme court. The People on the relation of Charles Kilbourne and others against Giles M. Benedict and others, commissioners, &c., and others. Summons, complaint, injunction, order, and bond. Fees $15.00. M. B. Champlain, attorney-general, for plaintiffs, Monticello, N. Y. Filed July 3, 1869.

229 Supreme court, county of Sullivan.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of Charles Kilbourne and others, plaintiffs,
ag'st.
GILES M. BENEDICT, WILLIAM H. CADY, & Nathan S. Hamilton, commissioners of the town of Thompson, &c., and others, defendants.

The defendants, Giles M. Benedict, William H. Cady, & Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after *after* the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson & Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, answering the complaint in the above-mentioned action, allege that under and by virtue of the above-mentioned act, the consents mentioned and stated in
230 said complaint, and the other acts and things *preemptorily* required by said act to be done and performed having been done,

and the requisitions thereof having been complied with as stated & set forth in said complaint, they, the said commissioners of said town of Thompson, had full power and lawful authority to do and perform each and every of the acts alleged in said complaint to have been done and performed by them as such commissioners, and the said defendants deny that the bonds of the town of Thompson aforesaid, to the amount of $148,000, have been fraudulently and unlawfully issued by them to "the Monticello and Port Jervis Railway Company," and that the said bonds have been fraudulently disposed of by them the said commissioners, and they also deny that the Monticello and Port Jervis Railway Company is irresponsible, and they also deny each and every of the statements, allegations, and denials in said complaint contrary to or in anywise inconsistent with the hereinabove stated allegations and denials.

Wherefore the said defendants demand that said complaint
231 be dismissed & that costs be adjudged to the said defendants.

J. A. THOMPSON,
Att'y for G. M. Benedict & others, Com'rs, &c., Def'ts.

SULLIVAN COUNTY, *ss:*

, of said county, being duly sworn, says that the matters, denials, and statements in the foregoing answer are true of his own knowledge, except as to the matters therein stated upon information and belief, and that as to those matters he believes them to be true, and that he is one of the commissioners of the town of Thompson named in said answer as defendants.

G. M. BENEDICT.

Sworn to Aug't 3rd, 1869, before me.

D. G. STARR,
Justice of the Peace.

(Endorsed:) Supreme Court. The People, &c., ex rel. Charles Kilbourne & others ag'st G. M. Benedict & others. Copy answer of com'rs of Thompson. J. A. Thompson, att'y for G. M. Benedict & others, com'rs, &c., def'ts. Hon. M. B. Champlain, att'y gen'l. Read Aug't 6, 1869.

232 Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson, & all other tax-payers of the town of Thompson, Sullivan County, New York, pl'ff,

ag'st

GILES M. BENEDICT, WM. H. CADY, NATHAN S. Hamilton, commissioners of the town of Thompson, &c., & F. C. Crowley, C. L. Colt, & Wm. D. Colt, The Monticello & Port Jervis Railway Company, & the town of Thompson, def'ts.

The defendant Frederick C. Crowley, by Arch'd C. Niven, his attorney, answers the complaint of the pl'ffs herein, & denies each and every allegation therein (except as hereinafter answered), for the reason that he has not sufficient knowledge of the allegations in the complaint on which [illegible] The said defendant Crowley admits that he & the

said C. L. Colt & W. D. Colt did enter into a contract with the said railway company, by the the terms whereof they did agree to build the said railway from Monticello to Port Jervis, and did further agree to receive in part payment for said work, as cash, the bonds of the
233 town of Thompson, issued pursuant to law, and the residue in money, which bonds were taken at par value. That shortly after the making of said contract the said C. L. Colt & W. D. Colt sold all their interest in the said contract to this defendant, & this defendant avers as a matter of defence that the said defendants C. L. Colt & W. D. Colt had no interest in the contract at the time of the commencement of this suit, nor at any subsequent time, & are therefore improperly joined as defendants herein.

This defendant, further answering, says that, pursuant to the provisions of the contract made with the said railway company, he has proceeded in good faith to construct said railway, & has now employed upon the work & engaged in its construction about four hundred persons, & about eight miles of the railway is built & graded ready for the ties to be laid; that heavy contracts are made for the construction of said railway, & he has intended & does intend to perform the
234 contract on his part, and he denies all knowledge of any fraudulent issue of bonds, or any other fraud connected with the issuing or sale of said bonds; that said defendant therefore asks that the complaint be dismissed with costs.

A. C. NIVEN, *Att'y.*

SULLIVAN COUNTY, *ss:*

Frederick C. Crowley, being duly sworn, says that he is the defendant in this action; that he has heard the foregoing answer read & knows the contents thereof, & that the same is true of his own knowledge, except as to the matters stated on information & belief, & as to those matters he believes it to be true.

F. C. CROWLEY.

Sworn to July 10, 1869, before me.

W. L. THORNTON,
Notary Public.

(Endorsed:) Supreme court. The People of the State New York ex rel. Charles Kilbourne & others ag'st Giles M. Benedict & others.

SIR: Please take notice that I have been retained by & do appear for the defendant, F. C. Crowley, in the above-entitled action, & that
235 the within is a copy of said defendant's answer therein.

Yours, &c.,

A. C. NIVEN,
Att'y for F. C. Crowley, Monticello, N. Y.

To M. B. CHAMPLAIN, Esq.,
Attorney-General for Plaintiffs.

Served 30th July.

236 Supreme court.

THE PEOPLE OF THE STATE OF NEW YORK ON the relation of Charles Kilbourn & others
ag'st
GILES M. BENEDICT, WILLIAM H. CADY, & Nathan S. Hamilton, comr's, &c., The Monticello and Port Jervis Railway Co. & others.

The defendant, the Monticello & Port Jervis Railroad Company, by

has not sufficient knowledge of the allegations [illegible] The said defendant Crowley admits that he & the

Clinton V. R. Ludington, its attorney, in answer to the plaintiff's complaint herein respectfully shows to this court and avers that the said company was organized in due form of law for the purposes set forth in said complaint; that said company would not have been organized had not the said town of Thompson, in said county of Sullivan, and the town of Deerpark, in the county of Orange, by a majority of their tax-payers, whose names appeared on the assessment-rolls of their respective towns for the year 1867, and who represented a majority of the real and personal property of the said town appearing on said assessment-rolls for the said year (exclusive of non-residents), signed, acknowledged, and delivered the assent in writing set forth in the said complaint as
237 required and directed by chapter 553 of the laws of 1868; that without the aid from these towns, as contemplated and provided by the said chapter and as signified and expressed by the said tax-payers and property holders, through the assents signed as aforesaid, it would have been necessary and wholly impracticable to have formed said company for such a purpose, for the want of capital or means to carry out its object; that such organization was predicated upon its faith and guaranty of said towns, expressed or intended to be expressed in and declared through the assents aforesaid, that they would furnish aid of said railroad, the money or its equivalent to an amount on the part of said town of Thompson of $148,000, and on the part of the said town of Deerpark of $200,000, and on the part of said town of Forestburgh the sum of $23,000; and that the assents executed in manner and form aforesaid were so executed by the tax-payers aforesaid in the faith and belief that said company would be organized for the purpose of constructing a railroad leading from the village of Monticello, through
238 the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the village of Port Jervis, in the county of Orange; that the said company upon its organization proceeded to make all necessary surveys, profiles, and maps of said railroad and to locate the same according to the true intent and meaning of the act and chapter aforesaid whose title was embodied in said assents, and according to the design, purpose, and intention of the tax-payers and property holders of the said town of Thompson, as well as of the other towns aforesaid, who gave, executed, and delivered the same. And the said defendant, the Monticello and Port Jervis Railway Company, further answering, avers that prior to the giving and execution of the said assents by the tax-payers and property holders of the said towns, as well as while the same were being given and executed, it was commonly intended and understood by such tax-payers and property holders that the said company would be organized for the purpose aforesaid
239 whenever the requisite assents under the provisions of the act and chapter aforesaid should be obtained and the means as contemplated therein and thereby should be assured to such company to be organized as aforesaid; that during the period aforesaid the formation of no other company was discussed or contemplated on the basis of said assents than the one subsequently organized, and which is the defendant aforesaid; that it is reasonably worth the sum of $650,000 to construct said railroad with all the necessary depots, engine houses, platforms, and turn-tables, including iron, ties, and all other appurtenances necessary for a railroad, exclusive of right of way, real estate and equipments; that the total amount of subscription by individuals and corporations to the capital stock of the said company exceeded fifteen per cent. of the aggregate amount of bonds issued by the said towns in aid of the said railroad, and ten per cent. thereof had been duly paid to said company before said

bonds were issued; that said subscriptions to said stock were made in good faith and by parties believed to be solvent and responsible;
240 that many of said subscribers have already paid in cash fifty per cent. on their subscriptions to said company, which have been expended in purchasing the right of way for said road, engineering and other necessary expenses connected therewith; that about fifteen thousand dollars have been expended by said company for the right of way for said railroad, and about fifteen thousand more will be required for a like purpose and for the purchase of other real estate needed by said company, and for paying damages to owners of real estate, and the defendant further shows that prior to the 11th of March, 1869, they had completed all the surveys, profits, and estimates of work necessary in the construction of said railroad, and had publicly advertised for proposals to build the same complete for the rolling stock; that on the said 11th day of March they opened at a meeting of their board of directors all proposals received by them; that they ranged from $630,000 to $1,100,000; that the company reserved the right to exclude any or all proposals;
241 that they accepted of the proposal of the said Wm. D. Colt & Co. to build and complete said road and all necessary improvements, buildings, and appurtenances belonging to a railroad, except rolling stock, at and for the price and sum of $650,000, which was the estimated cost of the same made by Frank Cunningham, the engineer of said company; that said estimates and proposals were made upon a cash basis, and that being the lowest cash price the said company could obtain for the performance of said work; that on the said 11th day of March the said company entered into a contract in writing with the said Wm. D. Colt & Co. to take and build the said railroad, with all necessary turn-outs, switches, turn-table, depots, engine-houses, water-tanks, platforms, and other necessary works and improvements ready for the rolling stock at and for the said sum of $650,000, the same to be done and completed in a manner acceptable to the said company and its engineer by the 1st day of June, 1870; that the said Wm.
242 D. Colt & Co. proposed to take and accept, as a payment of the said $650,000, from said company for the work aforesaid, $25,000 in cash, $350,000 in the bonds of the said towns of Thompson, Forestburgh, and Deer park at their par value, and the balance in the first-mortgage bonds of the said road, and the said company accepted of said proposal and stipulated in said agreement to pay the said Wm. D. Colt & Co. in the manner proposed as aforesaid; that said agreement was made in due form of law, and is binding and obligatory upon the parties thereto. And the said defendant, the railroad company aforesaid, further shows that afterwards, and before any bonds had been issued by the commissioners of said towns or either of them, the said company offered to take of the said commissioners of the said towns the said sum of $350,000 in their bonds, issued in pursuance of the act aforesaid, at their par value, and deliver to said commissioners certificate of the
243 capital stock in said company at its par value equal in amount to and representing the amount of bonds furnished by said towns respectively, and which are the bonds in part whose issue and use is the subject of this action; that the said commissioners of the said town of Thompson thereupon duly subscribed upon the stock books of said company for $148,000 of the capital stock therein, and delivered to said company a like amount in the bonds of said town, and the said company subsequently delivered to said commissioners a certificate for $148,000 of the capital stock in said company, representing one thousand four hundred and eighty shares of one hundred dollars each; that the

Clinton V. R. Ludington, its attorney, in answer to the plaintiff's complaint herein respectfully shows to this court and avers that the said company was organized in due form of law for the purposes set forth in said complaint; that said company would not have been organized had not the said town of Thompson, in said county of Sullivan, and the town of Deerpark, in the county of Orange, by a majority of their tax-payers, whose names appeared on the assessment-rolls of their respective towns for the year 1867, and who represented a majority of the real and personal property of the said town appearing on said assessment-rolls for the said year (exclusive of non-residents), signed, acknowledged, and delivered the assent in writing set forth in the said complaint as
237 required and directed by chapter 553 of the laws of 1868; that without the aid from these towns, as contemplated and provided by the said chapter and as signified and expressed by the said tax-payers and property holders, through the assents signed as aforesaid, it would have been necessary and wholly impracticable to have formed said company for such a purpose, for the want of capital or means to carry out its object; that such organization was predicated upon its faith and guaranty of said towns, expressed or intended to be expressed in and declared through the assents aforesaid, that they would furnish aid of said railroad, the money or its equivalent to an amount on the part of said town of Thompson of $148,000, and on the part of the said town of Deerpark of $200,000, and on the part of said town of Forestburgh the sum of $23,000; and that the assents executed in manner and form aforesaid were so executed by the tax-payers aforesaid in the faith and belief that said company would be organized for the purpose of constructing a railroad leading from the village of Monticello, through
238 the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the village of Port Jervis, in the county of Orange; that the said company upon its organization proceeded to make all necessary surveys, profiles, and maps of said railroad and to locate the same according to the true intent and meaning of the act and chapter aforesaid whose title was embodied in said assents, and according to the design, purpose, and intention of the tax-payers and property holders of the said town of Thompson, as well as of the other towns aforesaid, who gave, executed, and delivered the same. And the said defendant, the Monticello and Port Jervis Railway Company, further answering, avers that prior to the giving and execution of the said assents by the tax-payers and property holders of the said towns, as well as while the same were being given and executed, it was commonly intended and understood by such tax-payers and property holders that the said company would be organized for the purpose aforesaid
239 whenever the requisite assents under the provisions of the act and chapter aforesaid should be obtained and the means as contemplated therein and thereby should be assured to such company to be organized as aforesaid; that during the period aforesaid the formation of no other company was discussed or contemplated on the basis of said assents than the one subsequently organized, and which is the defendant aforesaid; that it is reasonably worth the sum of $650,000 to construct said railroad with all the necessary depots, engine houses, platforms, and turn-tables, including iron, ties, and all other appurtenances necessary for a railroad, exclusive of right of way, real estate and equipments; that the total amount of subscription by individuals and corporations to the capital stock of the said company exceeded fifteen per cent. of the aggregate amount of bonds issued by the said towns in aid of the said railroad, and ten per cent. thereof had been duly paid to said company before said

bonds were issued; that said subscriptions to said stock were made in good faith and by parties believed to be solvent and responsible;
240 that many of said subscribers have already paid in cash fifty per cent. on their subscriptions to said company, which have been expended in purchasing the right of way for said road, engineering and other necessary expenses connected therewith; that about fifteen thousand dollars have been expended by said company for the right of way for said railroad, and about fifteen thousand more will be required for a like purpose and for the purchase of other real estate needed by said company, and for paying damages to owners of real estate, and the defendant further shows that prior to the 11th of March, 1869, they had completed all the surveys, profits, and estimates of work necessary in the construction of said railroad, and had publicly advertised for proposals to build the same complete for the rolling stock; that on the said 11th day of March they opened at a meeting of their board of directors all proposals received by them; that they ranged from $630,000 to $1,100,000; that the company reserved the right to exclude any or all proposals;
241 that they accepted of the proposal of the said Wm. D. Colt & Co. to build and complete said road and all necessary improvements, buildings, and appurtenances belonging to a railroad, except rolling stock, at and for the price and sum of $650,000, which was the estimated cost of the same made by Frank Cunningham, the engineer of said company; that said estimates and proposals were made upon a cash basis, and that being the lowest cash price the said company could obtain for the performance of said work; that on the said 11th day of March the said company entered into a contract in writing with the said Wm. D. Colt & Co. to take and build the said railroad, with all necessary turn-outs, switches, turn-table, depots, engine-houses, water-tanks, platforms, and other necessary works and improvements ready for the rolling stock at and for the said sum of $650,000, the same to be done and completed in a manner acceptable to the said company and its engineer by the 1st day of June, 1870; that the said Wm.
242 D. Colt & Co. proposed to take and accept, as a payment of the said $650,000, from said company for the work aforesaid, $25,000 in cash, $350,000 in the bonds of the said towns of Thompson, Forestburgh, and Deer park at their par value, and the balance in the first-mortgage bonds of the said road, and the said company accepted of said proposal and stipulated in said agreement to pay the said Wm. D. Colt & Co. in the manner proposed as aforesaid; that said agreement was made in due form of law, and is binding and obligatory upon the parties thereto. And the said defendant, the railroad company aforesaid, further shows that afterwards, and before any bonds had been issued by the commissioners of said towns or either of them, the said company offered to take of the said commissioners of the said towns the said sum of $350,000 in their bonds, issued in pursuance of the act aforesaid, at their par value, and deliver to said commissioners certificate of the
243 capital stock in said company at its par value equal in amount to and representing the amount of bonds furnished by said towns respectively, and which are the bonds in part whose issue and use is the subject of this action; that the said commissioners of the said town of Thompson thereupon duly subscribed upon the stock books of said company for $148,000 of the capital stock therein, and delivered to said company a like amount in the bonds of said town, and the said company subsequently delivered to said commissioners a certificate for $148,000 of the capital stock in said company, representing one thousand four hundred and eighty shares of one hundred dollars each; that the

whole transaction, both with said Wm. D. Colt & Co. and the said commissioners, was open, public, in good faith, and for the best interest of the town of Thompson and the said company; that the said company could, up to the commencement of this action, use
244 the said bonds at their par value in payment for the liabilities of said company; that upon the strength and faith of said agreement work was commenced on the said road, or the line thereof, by the said Wm. D. Colt & Co., on the 15th day of April, 1869, and so vigorously prosecuted that when this action was commenced over three hundred men, besides teams, were actually employed in said work on said road, and about eight miles, or one-third of the entire line, had been graded, and many thousand ties purchased for the road; that work has been opened on the heaviest part of said road; that about $75,000 had been expended on said road before this action was commenced; that without the use of the bonds of the said town of Thompson, issued and delivered to said company as aforesaid, the said company cannot perform its contract with said Wm. D. Colt & Co., and they cannot and will not perform it on their part, and the said enterprise, so important to the material interest of said town and to the plaintiffs,
245 must totally fail for the want of means to finish and complete it, and the said company must as a consequence fail to meet its obligations, and its stockholders will be involved in personal disgrace and pecuniary loss; that the building of said road was based upon the issuing of bonds by said towns in its aid, and not upon the subscriptions of individuals and corporations; that the subscriptions by individuals and corporations to the stock of said road were made only to meet the condition in the act aforesaid; that no further subscriptions to any extent can be obtained toward building and completing said railroad, nor can the towns, or any of them, can be rebonded, or the requisite assents again be obtained from the taxpayers thereof, to aid in the building of the same; that from first to last all proceedings on the subject of building said road have been public, and the in-
246 tention of the people and taxpayers aforesaid thus far carried out by said company and commissions, without objection or remonstrance by the said plaintiffs or either of them in any form or manner whatever, but with the assent and acquiescence of such and all of them. Wherefore the said defendant demands that the prayers of the said plaintiffs in the said complaints be denied, and that the same be dismissed with costs of this action.

C. V. R. LUDINGTON,
Att'y for R. R. Co.

SULLIVAN COUNTY, *ss:*

Thornton A. Niven, being duly sworn, says that he is the vice-president of the Monticello & Port Jervis Railroad Company, one of the defendants herein, duly elected in pursuance of the by-laws of the said company, that he has heard read the foregoing answer, and that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and as to those matters he believes it to be true.

THORNTON A. NIVEN.

Sworn to before me this 24th day of July, 1869.

D. G. STARR,
Justice of the Peace.

247 (Indorsed:) Supreme court. The People of the State of New

York et al., Charles Kilbourn, and others, agst. Giles M. Benedict and others, com'rs, &c., & the M. & P. J. Railroad Co. Copy. Def't's answer. C. V. R. Ludington, att'y for R. R. Co. Served 26th July, 1869. To M. B. Champlain, att'y-general.

248 Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of Charles Kilbourne, Samuel Thompson and all other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

ags't

GILES M. BENEDICT, WILLIAM H. CADY & Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County, passed May 4, 1868, and F. C. Crowley, C. S. Colt and William D. Colt, The Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., def'ts.

249 The above-named defendant, the Town of Thompson, demurs to the plaintiffs' complaint herein—

First. Because it appears upon the face of the complaint that the said town of Thompson (that is to say, all the tax-payers of the said town of Thompson) is named as one of the plaintiffs or relators, and also that said town of Thompson is named as one of the defendants and is improperly joined as a defendant.

Second. No action can be maintained in the name and on the part of all other tax-payers as plaintiffs.

And the said defendant, The Town of Thompson, further demurs to the said plaintiffs' complaint herein, because the said complaint does not state facts sufficient to constitute a cause of action against the said defendant, the said Town of Thompson.

Dated July 23, 1869.

JAMES L. STEWART,
Att'y for the Def't, the Town of Thompson.

250 (Indorsed:) Supreme court. The People of the State of New York on the relation, &c., ag'st Town of Thompson & others, def'ts. demurrer. J. L. Stewart, att'y for def't., Town of Thompson, Monticello, N. Y.

Take notice, I am retained for the def't, the Town of Thompson, as att'y for the said def't in this action.

July 23, 1869.

Yours, &c.,

J. L. STEWART.

To M. B. CHAMPLAIN,
The Pl'ffs' Att'y.

Filed 23rd July, 1869.

251 At a general term of the supreme court of the State of New York, held in and for the third judicial district of the said State, at the capitol, in the city of Albany, on the 31st day of May, 1870.

Present, Hon. Henry Hogeboom, Rufus H. Peckham, Charles R. Ingalls, justices.

THE PEOPLE EX REL. KILBOURN ET AL.
ag'st
THE TOWN OF THOMPSON, BENEDICT, ET AL.

The appeal in the above-entitled cause having been called in its order on the calendar, and after hearing Mr. A. J. Bush, of counsel for the plaintiff and appellant, in favor of the said appeal, and Mr. A. J. Parker, of counsel for the defendant and respondent, in opposition thereto, and the court having duly deliberated thereon, it is ordered and adjudged that the order made at a special term of this court sustaining the
252 demurrer herein be, and the same is hereby, reversed, and the demurrer overruled, with costs, with leave to the defendants to answer on payment of costs.

Copy.

JOHN McEWEN, *Clerk.*

(Endorsed:) Supreme court. The People ex rel. Kilburn et al. ag'st The Town of Thompson, Benedict, et al. Copy order general term reversing order and overruling demurrer, &c. A. J. Bush, pl'ffs' att'y. Monticello, N. Y. Fees, 1.25; postage, 3—$1.28. Filed June 10, 1870,

253 Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK ON the relation of Charles T. Kilbourne, Samuel G. Thompson, and others, pl'ffs,
against
GILES M. BENEDICT & OTHERS, COMMISSIONERS, The Town of Thompson, and others, defendants.

SULLIVAN COUNTY, *ss:*

Timothy F. Bush, of said county, being duly sworn, says that no answer has been served in this action by or on behalf of the def'ts, C. L. Colt & Wm. D. Colt, or the Town of Thompson, and that the costs of the demurrer interposed by the said def't, the Town of Thompson, has not been paid.

T. F. BUSH,
Counsel for Pl'ffs.

Sworn and subscribed before me this 21st day of November, 1872.

BENJ. REYNOLDS,
Notary Public.

254 Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK ON the relation of Charles T. Kilbourne, Samuel G. Thompson, and all other taxpayers of the town of Thompson, Sullivan County, New York, plaintiffs,

ag'st

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county , to Port Jervis, Orange County," passed May fourth, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, The Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

255 This cause having been brought to trial before the court, at a circuit court held at the court-house in Monticello, in & for the county of Sullivan, on the 20th day of May, 1872, and the court having heard the proofs of the respective parties, the same being uncontradicted, dismissed the jury and decides and finds the following facts:

First. That Charles T. Kilbourne and Samuel G. Thompson, the relators named, are and were resident tax-payers of the town of Thompson, in the county of Sullivan, at the time this action was commenced in the month of June, 1869.

Second. That in the years 1868 & 1869 the defendants, William H. Cady, Giles M. Benedict, and Nathan S. Hamilton were commissioners of the said town of Thompson, as alleged in the complaint, duly appointed and qualified under and by virtue of the provisions of an act of the legislature of the State of New York, passed the 4th day of May, 1868, being an act entitled "An act to authorize certain towns in
256 the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Forestburgh and Thompson, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," and were acting as such commissioners during the time aforesaid after the passage of said act.

Third. That after the passage of the said act & during the month of May, 1868, a majority of the taxable inhabitants of the said town of Thompson, owning or legally representing more than a majority of the taxable property of the said town, excluding that of non-residents of said town for the year 1867, and whose names appear upon the assess-

ment roll the year 1867, did subscribe their names in writing to a written consent, of which the following is a copy: "We, the undersigned taxpayers of the town of Thompson, county of Sullivan, and State of
257 New York, in accordance with provisions of an act entitled, 'An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may be hereafter organized within three years from the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County,' passed May 4th, 1868, do hereby consent that the commissioner or commissioners appointed for the said town of Thompson under & by virtue of the provisions of the said act, may borrow, upon the faith and credit of the said town of Thompson, the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment roll of said town for the year 1867, at a rate of interest not exceeding 7 per cent. for a period not exceeding 30 years, and to execute therefor, under their hands and seals,
258 the bonds of the said town of Thompson, and to do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid, dated May 16th, 1868." That the consents signed as aforesaid were duly proved and verified by the oath of the assessor of the said town of Thompson, and filed in the office of the clerk of the county of Sullivan, on the 19th day of April, 1869; that no other or different consents have been executed or filed in the said clerk's office. That of the persons so signing 25 were females, and one who signs as an administrator of an estate in said town.

Fourth. That the defendants, the Monticello & Port Jervis Railway Co., is an association and corporation formed under the laws of the State of New York, and was organized by filing its articles of association in the office of the secretary of the State of New York, on the 2nd day of September, 1868, for the purpose of constructing, maintain'g, and operating a railway for public use in the conveyance of persons & property from the village of Monticello, in said county of Sullivan,
259 to the said village of Port Jervis, in the said county of Orange, through the towns of Thompson, Forestburgh, & Deerpark, aforesaid, which road is to be maintained and operated for ninety-nine years; that the capital stock named in the said articles of association is $500,000. That the actual amount of the stock subscribed for and taken is $430,000, of which $70,000 is taken and held by private individuals, $148,000 by the said commissioners of the town of Thompson, and $223,000 by the commissioners of the said towns of Forestburgh & *and* Deerpark.

Fifth. That on the first day of May the said commissioners, attempting to act in behalf of said town, subscribed and executed 148 bonds, numbered from 1 to 148 inclusive, in denomination and amount of $1,000 each, and which said bonds were in the words and figures following, to wit:

No. .] UNITED STATES OF AMERICA. [$1,000.

THE TOWN OF THOMPSON, COUNTY OF SULLIVAN, STATE OF NEW YORK.

This bond is a valid security, being issued by virtue of an act entitled "An act to authorize certain towns in the counties of Sullivan and

260 Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County,' passed May 4th, 1868, and of the act amendatory thereof, passed April 1st, 1869.

Know all men by these presents, that the town of Thompson, in the county of Sullivan, and State of New York, by the undersigned commissioners thereof, by virtue and in pursuance of the acts above entitled and referred to, and for value received in the stock of the Monticello & Port Jervis Railway Co., promises to pay the bearer the sum of one thousand dollars on the first day of March, in the year 1899, at the National Union Bank, in Monticello, N. Y., with interest at 7 per cent. per annum, payable semi annually, on the first day of March and September in each year, at the National Hanover Bank of the
261 city of New York, on the presentation and surrender of the coupons for such interest.

In witness whereof we have hereunto set our hands and seals and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this first day of May, in the year one thousand eight hundred and sixty-nine.

G. M. BENEDICT,
N. S. HAMILTON,
W. H. CADY,
Commissioners.

Registered in the county clerk's office of the county of Sullivan this first day of May, 1869.

C. L. MORRIS,
Co. Clerk.

Sixth. That on the said 1st day of May, 1869, the said commissioners executed and attached to each of the said bonds 59 coupons, numbered from one to 59, inclusive, for the payment of the interest semi-annually, according to the provisions of the said bond, which coupons were signed by the said William H. Cady, under the directions of said commissioners. That on the said first day of May, 1869, the said commissioners caused the said bonds, with the said coupons attached, to be registered in the office of the *the* clerk of the said county of Sullivan, by the county clerk of the said county.

262 Seventh. That thereafter and before the 22d day of October, 1869, the said commissioner' did subscribe, in the corporate name of the said town of Thompson, for the stock of the said Railway Company to the amount of $148,000, and did deliver to the said railway company, in exchange for the said stock, the said 148 bonds, with the said coupons attached, so executed and registered as aforesaid. That the said railway company did receive the said subscription to their stock, and did deliver to the said commissioners the stock of the said company in exchange for the said bonds to the amount of $148,000.

Eighth. That none of the said bonds issued as aforesaid by the said commissioners were sold or disposed of by them for money, but were issued and delivered to the said railway company in exchange for the stocks of the said company, which stocks were received by the said commissioners in consideration of the said bonds.

Ninth. That before the commencement of this action the said railway co. had surveyed and located their line of road through the said towns, from the village of Monticello to Port Jervis, and had expended, in surveying and for right of way and work on the road, the sum of $250,000.

263 And that on the 11th day of March, 1869, the said railway company entered into a written contract with the defendants, F. C. Crowley, C. L. Colt and William D. Colt, by the terms of which said Crowley & Colts agreed to furnish material and construct the said road for the sum of $718,750, and to receive from the said railway co. in payment therefor $25,000 in cash, $350,000 in town bonds of the towns along the line of the road, and $343,750 in the first-mortgage bonds of the company at their par value. Which payment the said railway co. agreed to make in the manner above stated, on the fifth day of each and every month, according to the monthly estimate of the work, commencing with the 5th day of May, 1869, retaining always 20 per cent. of said estimates as a security for the performance of the contract. That thereafter, and in pursuance of the said contract, all of the said bonds issued as aforesaid by the said commissioners of the said town of Thompson were delivered to the said railway company *to* the said defendants, Colts & Crowley. That the defendants, Cady, Hamilton & Benedict, during all the time they were acting as commissioners as aforesaid, were stockholders and directors of the said railway co.

The court decided and held as conclusions of law:

264 First. That the consents of the tax-payers signed and filed as before stated, and upon which the said commissioners proceeded to issue the said bonds, were defective and invalid, and insufficient to authorize the issue of the said bonds by the said commissioners.

Second. That the bonds and coupons attached, issued by the said commissioners, were unauthorized and are invalid and void, and of no effect as obligations against the said Town of Thompson.

Third. That the said bond should be delivered up and cancelled.

Fourth. That the Town of Thompson acquired no right *of* title to the stock of the Monticello & Port Jervis Railway Co., which was subscribed for and delivered to the *the* said commissioners, & that the said stocks shall be surrendered to the said railway co.

Fifth. That each, every, and all of the defendants, or either and any of them, be forbidden and perpetually restrained and enjoined from using, loaning, or selling said bonds or any of them; and that the defendants, the said commissioners, be enjoined and restrained from executing any other bonds on behalf of their town upon the strength of the said consents and until the necessary consents, as provided by said acts of the legislature are obtained and filed in due form of law. And that a decree and judgment of this court be entered and recorded in accordance

265 with this decision, and that the pl'ffs have and recover a judgment against the defendants for the costs of this action.

C. R. INGALLS,
Justice of Supreme Court.

(Endorsed:) Supreme court. The People ex rel. Kilbourne & Thompson against Giles M. Benedict et al. Copy decision of the court on trial at the May circuit, 1872. Exceptions ordered to be heard in the first instance at the general term, and proceedings stayed.

266 Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, ON the relation of Charles T. Kilbourne, Samuel G. Thompson, and all other taxpayers of the Town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the Town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the county of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deer Park, in the county of Orange, to Port Jervis, Orange County," passed May 4th, 1868, and F. C. Crowley, C. L. Colt and William D. Colt, The Monticello and Port Jervis Railway Company, and the town of Thompson, in Sullivan County, defendants.

The defendant, the Town of Thompson, having interposed a demurrer to the complaint herein, and the said demurrer having been overruled by this court, at a general term thereof, with leave to the said defendant to answer the complaint upon the payment of the costs of the de-
267 murrer; and the said defendant having failed to answer the said complaint, and the issues as to all the other defendants having been regularly brought to trial at a circuit court held in and for the county of Sullivan in May, 1872, and the decision of the court herein having been duly filed, and no exceptions to the said decision having been served or filed, and no case made, now, on motion of F. C. Barlow, attorney-general, it is adjudged, decreed, and determined that the bonds heretofore issued by Giles M. Benedict, William H. Cady, and Nathan S. Hamilton, commissioners, and registered in the Sullivan County clerk's office, in miscellaneous records, page 427, May 1st, 1869, for one hundred and forty-eight thousand dollars, which said bonds are described in the complaint in this action, are and each of said bonds is void and of no effect, and were issued by the said commissioners without authority of law therefor. That the certificate and certificates of stock issued by the Monticello and Port Jervis Railway Company to the town of Thompson, and to the said commissioners for the said town, in consideration of said bonds and in exchange for the same, shall be delivered up to the said railway company and cancelled, and that the said bonds and each of them shall be delivered up & cancelled.

And it is further decreed, ordered, and adjudged that each and every and all of the defendants, or either and any of them, be forbidden
268 and perpetually enjoined and restrained from using, loaning, or selling said bonds or any of them, and that the defendants, the said commissioners, be perpetually enjoined and restrained from execut-

ing any other bonds on behalf of the town of Thompson upon the strength of the consents now on file in the said clerk's office, which said consents are referred to described in the complaint herein, and are also adjudged to be insufficient and of no effect.

It is further ordered and adjudged that the pl'ffs recover of the defendants in this action the sum or six hundred and three dollars for the costs and disbursements of this action, and that the plaintiffs recover of the defendants, the town of Thompson, the further sum of one hundred and eighteen dollars for costs and disbursements of the said demurrer.

Dated Nov. 21st, 1872.

F. W. JOHNSTON, *Clerk.*

STATE OF NEW YORK,
Sullivan County, Clerk's Office, ss:

I, Lewis N. Stanton, county clerk in and for said county, do hereby certify that I have compared the foregoing copy of a judgment roll with the original, now remaining on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original, including the indorsements thereon.

269 In testimony whereof I have hereunto set my hand and affixed the seal of said county this 15th day of February, A. D. 1878.

[L. S.] L. N. STANTON, *Clerk.*

(Endorsed:) Supreme Court. The People, ex rel. Charles T. Kilbourne et al., against Giles M. Benedict et al. Decree. Filed Dec. 4, 1872, at 11½ a. m.

270 EXHIBIT D.

Articles of association of the Monticello & Port Jervis Railway Company.

[Four 5 cent in. rev. stamp cancelled.]

SEC. I. This company shall be named and known as the Monticello & Port Jervis Railway Company, and shall be and continue a corporation for the term of ninety-nine years from the date of the filing of these articles in the office of the secretary of state of New York.

SEC. II. The purpose for which this company is organized is to construct, maintain, and operate a railway for public use in the conveyance of persons & property from the village of Monticello, in the county of Sullivan, N. Y., to the village of Port Jervis, in the county of Orange, to some point in said village upon or adjacent to the line of the Erie Railway, which proposed railway will be constructed in and pass through the towns of Thompson and Forestburgh, in the county of Sullivan, and the town of Deerpark, in the county of Orange.

SEC. III. Said railway shall be twenty-one miles in length as near as may be; the capital stock of said company, five hundred thousand dollars, consisting of 10,000 shares of fifty dollars each, which capital stock is not less than $10,000 a mile for the whole length of said road, and may hereafter be increased in accordance with the provisions of the
271 laws relating to railroad corporations.

SEC. IV. The directors of said company shall be fifteen in number, and Clinton V. R. Ludington, Wm. H. Cady, Nathan S. Hamilton, Thornton R. Niven, Giles M. Benedict, & Eli W. Fairchild, of Thompson; Osman B. Wheeler & Edwin Hartwell, of Forestburgh; and S. Otis Dimwick, Augustus B. Goodale, George Malvin, Orville J. Brown, Franklin

R. Broadhead, Edward A. Brown, & Francis Marvin, of Deerpark, shall be the first board of directors of said company, who shall manage its affairs for the first year and until others are chosen in their place.

SEC. V. The officers of said company shall be a president, vice-president, secretary, & treasurer, and such other officers and agents as the board of directors shall appoint and as they may deem necessary.

SEC. VI. The principal office of said company shall be located at such place at Port Jervis as the board of directors shall designate, and shall be known as the office of said company.

SEC. VII. An election to choose directors of said company shall be held at said office, or at such other place as the directors shall designate, on the first Tuesday of September, 1869, & annually thereafter,
272 on said day in each year, and the directors so chosen shall be directors for one year and until others are elected. If any vacancy shall occur the board of directors shall fill the vacancy by appointment, and the person appointed shall hold the office until the next annual election thereafter. No person shall be eligible to the office of director who is not the bona fide owner of at least ten shares of the capital stock of said company.

SEC. VIII. In order to perfect the organization of said Monticello & Port Jervis Railway Co., in pursuance of the acts of the legislature of the State of New York in such case made and provided, we, the undersigned persons, do hereby agree to take & do hereby subscribe for the numbers of shares of capital stock of said company, as hereinafter stated, and to pay the amount in cash which such shares represent, respectively, at such time or times & in such sums as the board of directors require.

June 27th, 1868.

(Here follows the names of forty-two subscribers for $19,800 of the capital stock of the company.)

273 STATE OF NEW YORK,
Orange County, ss:

W. H. Cody, E. A. Brown, & George Malven, of said county, being severally duly sworn, each for himself doth depose and say that they are directors named in the annexed articles of association of the Monticello & Port Jervis Railway Company; that an amount equal to at least one thousand dollars of stock per mile of the railroad proposed to be made has been subscribed thereto, and ten per cent. paid thereon in good faith in cash to the directors named in said articles of association; that said amount of stock has been subscribed in good faith, and that it is intended in good faith to construct, maintain and operate the road mentioned in said articles of association.

W. H. CODY.
E. A. BROWN.
GEORGE MALVEN.

Sworn to before me this 31st day of July, 1868.
JAMES N. PENNAY,
Justice of the Peace.

[5-cent in. rev. stamp cancelled.]

STATE OF NEW YORK,
Office of the Secretary of State:

I have compared the preceding with the original articles of association of the Monticello & Port Jervis Railway Company, with affidavit

thereto annexed, filed and recorded in this office on the second day of September, 1868, and hereby certify the same to be a correct
274 transcript therefrom, and of the whole of said original.

Witness my hand and seal of office of the secretary of state at the city of Albany, this fourth day of June, one thousand eight hundred and sixty-nine.

[L. S.] D. WILLIES, JR.,
Dep. Secretary of State.

EXHIBIT F.

Supreme court, Sullivan County.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson and all the other tax-payers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioners of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt,
275 and William D. Colt, The Monticello and Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., defendants.

It appearing to me by the sworn complaint in this action, that sufficient grounds exist for granting an injunction order in this action, upon motion of Marshall B. Champlain, attorney-general and attorney for the plaintiffs in this action, I do hereby order that the above-named defendants, The Commissioners of the Town of Thompson aforesaid, and the Monticello and Port Jervis Railway Company, and F. C. Crowley, C. L. Colt, and William D. Colt, and each and every of them, their agents, attorneys and officers, and the agents, attorneys, and officers of either or any of them, and all persons acting under or on behalf of said defendants or either or any of them, be, and they are, restrained and enjoined from using, loaning, or selling the bonds, or any part of them, mentioned and described in the complaint in this action, and which purport to have been issued by the defendants, the said commissioners, under the act described in the title of this action; and they, the said commissioners, defendants herein, are further restrained and enjoined from executing any other bonds on behalf of their said town upon the

strength of the consents described in the complaint in this action; and each and every of said defendants, their agents, officers, and
276 attorneys, and all other persons acting under them, or any or either of them, are hereby restrained and enjoined, as hereinbefore set forth, until the further order of this court.

Granted upon the complainants executing a bond in the sum of $2,000, with sureties to be approved by a justice of this court.

Dated Albany, June 24th, 1869.

R. W. PECKHAM.

277 Supreme court, Sullivan county.

THE PEOPLE OF THE STATE OF NEW YORK, on the relation of Charles Kilbourne, Samuel Thompson, and all other taxpayers of the town of Thompson, Sullivan County, New York, plaintiffs,

against

GILES M. BENEDICT, WILLIAM H. CADY, AND Nathan S. Hamilton, commissioner of the town of Thompson, in the county of Sullivan, appointed under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds, and take stock in any company now organized, or that may hereafter be organized within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in the said county of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange County," passed May 4, 1868, and F. C. Crowley, C. L. Colt, and William D. Colt, the Monticello and Port Jervis Railway Company, and the town of Thompson, in Sullivan county, defendants.

Whereas the above named plaintiffs, having applied to Rufus W. Peckham, a justice of this court, for an injunction restraining the above named defendants, and all and every of them (except the defendant the town of Thompson), and all other persons acting on their be-
278 half, or on behalf of either or any of them, from using, loaning or selling the bonds, or any part of them, mentioned and described in the complaint in this action, and from executing any other bonds on behalf of their said town; and whereas, on the 24th day of June, 1869, the said justice of this court did grant said injunction upon condition that the complainants in this action execute a bond in the sum of $2,000, with sureties to be approved by a justice of this court, we, the undersigned, Charles Kilbourne, Samuel Thompson, Henry S. Benedict, and Mathew P. Lindsley, all residents of said county of Sullivan, and of said town of Thompson, do undertake, on the part of the said plaintiffs, that the said plaintiffs will pay to said defendants such damages, not exceeding two thousand dollars, as they may sustain by reason of

the injunction, if the court shall finally decide that the plaintiffs were not entitled thereto.

Dated at Monticello, June 25th, 1869.

SAM'L G. THOMPSON. [L. S.]
CHARLES KILBOURNE. [L. S.]
HENRY S. BENEDICT. [L. S.]
M. P. LINDSLEY. [L. S.]

The words "will pay" interlined before signing.
Witness: A. J. BUSH.

STATE OF NEW YORK,
Sullivan County, ss:

On this 25th day of June, A. D. 1869, personally came before me Samuel Thompson, Charles Kilbourne, Henry S. Benedict, and
279 Mathew P. Lindsley, to me personally known to be the same persons described in and who executed the foregoing bond, and severally acknowledged that they executed the same.

A. J. BUSH,
County Judge of Sullivan County.

SULLIVAN COUNTY, *ss:*

Henry L. Benedict & Mathew P. Lindsley, being each duly sworn, doth each for himself severally say that he is a householder and freeholder in this State, and that he is worth two thousand dollars over and above all debts and liabilities he owes, or has in curred, and besides his property exempt from levy & sale on execution.

HENRY L. BENEDICT.
M. P. LINDSLEY.

Sworn severally before me June 25th, 1869.

A. J. BUSH,
County Judge.

I hereby approve of the foregoing bond and of the sureties therein named.
June 30, 1869.

A. B. TAPPEN,
Justice of the Supreme Court.

SULLIVAN COUNTY,
Clerk's Office, ss:

The foregoing bond was filed in this office the 2d day of July, 1869.
C. L. MORRIS, *Clerk.*

280 At a special term of the supreme court held at the city hall in the city of Albany, on the 27th day of July, 1869.
Present, Hon. C. R. Ingalls, justice.

THE PEOPLE OF THE STATE OF NEW YORK ON the relation of Charles Kilbourne & others, pl'ffs,
against
GILES M. BENEDICT, WILLIAM H. CADY, & Nathan S. Hamilton, Commissioners of the Town of Thompson, &c., & others, defendants.

On reading the motion papers on the part of the defendants, Giles M.

Benedict, William H. Cody, & Nathan S. Hamilton, commissioner', &c., and the papers on the part of the plaintiffs, and after hearing A. J. Parker, esq., of counsel for said defendants, and A. J. Bush, esq., of counsel for the plaintiffs, it is ordered that *that* the order of injunction in said action granted by Hon. R. W. Peckham, justice, bearing date on the 24th day of June, 1869, be and the same is hereby in all things vacated and set aside, and that the said defendants have and recover ten dollars costs of motion.

A true copy.

L. N. STANTON, *Clerk.*

281 Inasmuch as the several matters set forth in the foregoing bill of exceptions, as well as the exceptions therein contained, do not appear by the verdict of the jury or upon the records of said trial, and counsel for the defendant having prepared the said bill of exceptions in accordance with the rules and practice of the court, the same being approved by counsel for the plaintiff, the same is hereby allowed and ordered to be annexed to the record of this action in the office of the clerk of this court.

Signed and sealed during the term at which the said verdict was rendered by the undersigned, who was the presiding judge at said trial.

August 5th, 1878.

N. SHIPMAN, [L. S.]
Judge.

(Endorsed:) U. S. circuit court, southern dist. of New York. Orlando Perrine ag'st The Town of Thompson. Bill of exceptions. T. F. Bush, att'y for def't Monticello, N. Y. The within proposed bill of exceptions approved, dated July 29, '78. Jas. K. Hill, pl'ff's att'y. U. S. circuit court. Filed Aug. 8, 1878. John I. Davenport, clerk.

282 Supreme Court of the United States, October Term, 1878.

THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan, plaintiff in error,
against
ORLANDO PERRINE, DEFENDANT IN ERROR.

Afterwards to wit, on the second Monday of October in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said Town of Thompson, by T. F. Bush, its attorney, and says that in the records and proceedings aforesaid, and in the writ of error herein granted and issued, stated or referred to, there is manifest error in this, to wit:

The presiding justice erred in denying this plaintiff's request to direct a verdict for this pl'ff, to which denial this pl'ff duly excepted, as is more fully shown by the bill of exceptions herein.

2nd. The presiding justice erred in directing the jury to render a verdict for this defendant in error, to which direction this pl'ff duly excepted.

283 3rd. The verdict is against all the evidence in the case, and against law.

4th. The evidence in the case is insufficient to support the judgement.

5th. The bonds and coupons referred to in the complaint are absolutely void in law, and having been so adjudged by the highest court of the State of New York, they cannot be made the basis of a recovery or cause of action against the said town.

6th. The court had no jurisdiction of the action.

And the said Town of Thompson prays that the judgment against the said Town of Thompson herein may be reversed, annulled, and altogether held for naught, and that the said town may be restored to all things which it hath lost by occasion of the said judgment.

T. F. BUSH,
Atto'ney for Plaintiff in Error.

284 STATE OF NEW YORK,
Sullivan County, ss:

Timothy F. Bush, of said county, and attorney for the town of Thompson, pl'ff in error aforesaid, being duly sworn, deposes and says that on the 26th day of September, 1878, he duly served the foregoing assignment of errors on James K. Hill, attorney for the defendant in error, by depositing the same in the post-office at Monticello, N. Y., in a sealed envelope, properly folded, and directed to the said James K. Hill, the said defendant's attorney, at his office at No. 37 Wall street, New York City, and with the postage thereon duly paid, and that there is a regular communication by mail between Monticello and New York City aforesaid.

T. F. BUSH.

Sworn to before me Sept. 26th, 1878.

PETER E. POLEN,
Notary Public in & for Sullivan County.

(Endorsed:) Supreme Court of the United States. The town of Thompson, pl'ff in error, ag'st Orlando Perrine, def't in error.
285 Assignment of error. U. S. circuit court. Filed Sept. 27, 1878. John I. Davenport, clerk.

286 *Bond for costs.*

Circuit court of the United States of America, for the southern district of New York, in the second circuit.

ORLANDO PERRINE
vs.
THE TOWN OF THOMPSON, IN THE COUNTY OF Sullivan, N. Y.

Know all men by these presents that we, Charles S. Starr, Jacob Harris, Albert M. Fulton, David W. Burton, Stephen L. Parsons, Floyd Pelton, are held and firmly bound unto the above-named Orlando Perrine, in the sum of fifteen thousand dollars, to be paid to the said Orlando Perrine, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, and dated the twenty seventh day of August, in the year of our Lord one thousand eight hundred and seventy-eight.

Whereas the above-named Town of Thompson has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such, that if the above named Town of Thompson shall prosecute its said writ of error to effect, and answer all damages and costs if it shall fail to make its plea

good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. S. STARR. [L. S.]
JACOB HARRIS. [L. S.]
DAVID W. BURTON. [L. S.]
S. L. PARSON. [L. S.]
FLOYD PELTON. [L. S.]
A. M. FULTON. [L. S.]
W. A. RICE. [L. S.]

Sealed and delivered, and taken and acknowledged, this 27 day of August, 1878, before me.

GEO. McLAUGHLIN,
Notary Public, in and for Sullivan Co., N. Y.

287 (Indorsed:) Vol. , page . U. S. circuit court, Orlando Perrine vs. The town of Thompson, in the county of Sullivan. Bond for damages and costs on writ of error. T. F. Bush, for plaintiff in error. Filed this 9 day of Sept., 1878. J. M. D. Bond approved Sept. 31, 1878, Wm. G. Choate, D. J.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Charles S. Starr, Jacob Harris, Albert M. Fulton, Daniel W. Burton, Stephen L. Parsons, Floyd Pelton, W. A. Rice, being duly sworn, each deposes and says for himself, that he is worth the sum of five thousand dollars, over and above all his just debts and liabilities, and over and above property exempt from execution, and that he is a freeholder, and resident of said county.

C. S. STARR.
JACOB HARRIS.
DAVID W. BURTON.
S. L. PARSONS.
FLOYD PELTON.
A. M. FULTON.
W. A. RICE.

Sworn to this 27 day of August, A. D. 18 , before me.
[L. S.]
GEO. McLAUGHLIN,
Notary Public in & for Sullivan Co., N. Y.

STATE OF NEW YORK,
Sullivan County, Clerk's Office, ss:

I, Lewis N. Stanton, clerk of said county and of the courts of record held therein, do certify that Geo. McLaughlin, before whom the foregoing affidavits were made, and who has thereunto signed his name, was at the time of so doing a notary public in and for the county and State above named, commissioned and sworn, that all his official acts as such are entitled to full faith and credit, and that his signature thereto is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 3d day of August, 1878.

[L. S.]
L. N. STANTON,
Clerk.

United States of America to Orland Perrine, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the 2d Monday of October, 1878, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein the town of Thompson, in the county of Sullivan, is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 3d day of September, in the
289 year of our Lord one thousand eight hundred and seventy-eight.

WM. G. CHOATE,
Judge of U. S. District Court, Southern Dist. N. Y.

STATE OF NEW YORK,
Sullivan County, ss:

Timothy F. Bush, of said county, being duly sworn, deposes that on the 4th day of September, 1878, he duly served the within citation on the defendant in error therein named by delivering a copy thereof to James K. Hill, his attorney, at his office, No. 37 Wall street, New York City, and leaving the same with him personally, and at the same time showing him the original.

T. F. BUSH.

Sworn before me Sept. 6th, 1878.

PETER E. PALEN,
Notary Public.

(Indorsed:) U. S. circuit court, southern dist. of N. Y. Orlando Perrine ag'st The Town of Thompson, in the county of Sullivan. Citation. T. F. Bush. att'y for pl'ffs in error, Monticello, N. Y. U. S. circuit court. Filed Sep. 9, 1878. John I. Davenport, clerk.

(Indorsement on cover:) No. 282. The Town of Thompson, plaintiff in error, vs. Orlando Perrine. S. New York, C. C. U. S. Filed 17th October, 1878.

U. S. Supreme Court.

THE TOWN OF THOMPSON, PLAINTIFF IN ERROR,

Against

ORLANDO PERRINE.

No. 282.

BRIEF FOR PLAINTIFF IN ERROR.

T. F. BUSH, Counsel,
Monticello, N. Y.

SUPREME COURT OF THE UNITED STATES

No. 282.

THE TOWN OF THOMPSON, PLAINTIFF IN ERROR,

vs.

ORLANDO PERRINE.

1 This action was commenced in the Circuit Court for the Southern District of New York, by Orlando Perrine, a resident of the State of New Jersey, against the Plaintiff in error, one of the towns in the county of Sullivan in the State of New York.

Capias was served July 31st, 1875.

The complaint was filed May 1st, 1876.

The answer was filed June 20th, 1876.

The action was brought to recover upon coupons detached from bonds alleged to have been issued by the plaintiff in error, in pursuance of a statute of the State of New York, in aid of the construction of *The Monticello and Port Jervis Railroad*, within said State. (See complaint pages 3 to 70 of the record.)

The answer denies the validity of the bonds; denies that the plaintiff is a holder in good faith and for value, and alleges a *lis pendens* and judgment in the Supreme Court of the State of New York, by which the bonds were adjudged void and of no effect. (See answer pages 71, 72 of the record.)

2 The cause was brought to trial before the Hon. Nathaniel Shipman and a Jury, at a Circuit Court held in the said District in the city of New York on the 21st day of May, 1878. The evidence being undisputed the Court directed a verdict for the plain-
[illegible] claimed in the complaint, $6,846.70.

STATEMENT OF THE CASE.

On the 4th day of May, 1878, the Legislature of the State of New York passed a statute providing for issuing bonds of three towns named in the act, of which the town of Thompson was one.
3 Sections 1, 2, 3 of said statute are as follows:

CHAPTER 553.

AN ACT to authorize certain towns in the counties of Sullivan and Orange, to issue bonds and take stock, in any company now organized, or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county
4 of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange county.

Passed May 4, 1868, three-fifths being present, without the approval of the Governor.*

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. On the application, in writing, of twelve or more freeholders, residents of any town or incorporated village, in either of the counties of Sullivan or Orange, situated along the route of the
5 railroad from Monticello, in the said county of Sullivan, to Port Jervis, in the county of Orange, it shall be the duty of the county judge, of the county in which such town or incorporated village is situated, within ten days after receiving such application, to appoint, under his hand and seal, not more than three freeholders, residents of the towns or incorporated villages respectively, to be commissioners thereof, to carry into effect the purposes and provisions of this act, who shall hold their office respectively for the term of two years, and until others shall be appointed.

6 § 2. It shall be lawful for said commissioners to borrow, on the faith and credit of their respective towns and villages aforesaid, such sum of money, not exceeding thirty-three per cent. of the valuation of said town, to be ascertained by the assessment rolls thereof, respectively, for the year eighteen hundred and sixty-seven, for a term not exceeding thirty years, at a rate of interest not exceeding seven per cent. per annum, and to execute bonds therefor under their hands and seals respectively. The bonds so to be executed may be in such sums, and payable at such times and places, not exceeding
7 thirty years, and in such form as the said commissioners and their successors may deem expedient; but no such debt shall be contracted, or bonds issued by said commissioners, of or for either of said towns or villages, until the written consent shall have been obtained of a majority of the taxpayers of such town or incorporated vil-

*Pursuant to the last clause of section nine, article four of the Constitution of the State of New York.

lage, or their legal representatives, appearing upon the last assessment roll, as shall represent a majority of the taxable property (not including lands owned by non-residents) appearing upon the last assessment roll of such town, nor until an amount of the capital stock of said road shall have been subscribed and paid for by individuals or corporations, equal to fifteen per cent. of all amounts of town bonds issued, or to be issued, in aid of said railroad under this act; such consent shall state the amount of money authorized to be raised in such town or village, and the railroad company in the stock of which said money shall be invested, and shall be proved or acknowledged in the same manner as conveyances of real estate. The fact that the persons signing said consent are such majority of the taxpayers of said town or village, and represent a majority of the taxable property of such town or village, not including lands owned by non-residents, shall be proved by the affidavit of one of the assessors, or the town clerk of such town, endorsed upon or annexed to such written consent, and the assessor or town clerk of such town is hereby required to perform such service. Such consent and affidavit shall be filed in the office of the clerk of the county in which such town or village is situated, and a certified copy thereof in the town clerk's office of such town, and the same, or a certified copy thereof by the county clerk, shall be evidence of the facts therein contained, and certified in any court of this state, and before any judge or justice thereof.

§ 3. The said commissioners authorized by this act may, in their discretion, dispose of such bonds or any part thereof, to such persons or corporations and upon such terms as they shall deem most advantageous for their said town, but not for less than par, and the money that shall be raised by any loan or sale of such bonds shall be invested in the stock of such company now organized, or that may hereafter be organized, within two years after the passage of this act, for the purpose of building, or aiding in the building of a railroad from the village of Monticello, through the towns of Thompson, Forestburgh and Deerpark, to Port Jervis, in the county of Orange; and said money shall be applied and used in the construction of such road as aforesaid, its buildings and necessary appurtenances, and for no other purpose. The commissioners respectively, in the corporate name of each of their said towns or villages aforesaid, may subscribe for and purchase stock of such company to the amount they may have severally borrowed, as aforesaid, and by virtue of their said subscription or purchase of stock, and upon receiving certificates or the transfer of certificates for the amount of said stock so subscribed for and purchased by them, the said towns or villages shall acquire all the rights and privileges, and be liable to the same responsibilities as other stock-holders of said company; and it shall be lawful for the Commissioners provided for in this act, or either of them, with the consent of the others, or a majority of said

commissioners, to participate in and to act in all the regular and legally authorized meetings of the stock-holders, and either of
13 them may act as directors of such company, if he shall be duly elected as such.

Section 2 of this statute was amended slightly by Chap. 96 of the laws of New York passed in 1869, but in regard to matters wholly immaterial to this case. These statutes are set out at length in the record at page 73, &c.

In pursuance of this statute, three Commissioners were duly appointed for said town of Thompson by the County Judge of the County of Sullivan, and were duly qualified and entered upon
14 the duties of their office.

The consent of the required number of taxpayers, representing the requisite amount of property, was obtained and duly filed. Annexed to which and filed therewith was an affidavit of one of the assessors of the town as required by the statute.

The consent bears date May 16th, 1878, and is in the words and figures following:

"We, the undersigned, Tax-payers of the Town of Thompson, County of Sullivan, and State of New York, in accordance
15 with the provisions of an act entitled, 'An Act to authorize certain towns in the Counties of Sullivan & Orange to issue bonds and take stock in any company now organized, or that may hereafter be organized, within three years from the passage of this act, for the purpose of building a Railroad from the village of Monticello, in the County of Sullivan, through the towns of Thompson and Forestburgh, in the County of Sullivan, and the town of Deerpark, in the County of Orange, to Port Jervis, Orange County; passed May 4, 1868, do hereby consent that the Commissioners
16 appointed for the said town of Thompson, under and by virtue of the provisions of said act, may borrow upon the faith and credit of the town of Thompson the sum of $148,000, being less than 33 per cent. of the assessed value of the real and personal property of the said town, as shown by the assessment roll of said Town for the year 1867, at a rate of interest not exceeding 7 per cent., for a period not exceeding thirty years, and to execute therefor, under their hands and seals, the bonds of the said town of Thompson, and to do and perform such other acts and things necessary to
17 carry into effect the provisions of the act aforesaid. Dated May 16, 1868."

(Record page 87.)

The affidavit of the assessor states among other things, that the whole number of taxpayers of said town is 723; the whole amount of taxable property is $420,648. The whole number of taxpayers sign-

ing the consent is 424, and the whole amount of property represented by the consent is $224,138. (See affidavit page 87.)

Subsequent to the filing of such consent the Commissioners
18 issued 148 instruments purporting to be the bonds of said town, of the denomination of $1000 each, numbered from 1 to 148 inclusive; with coupons attached for the payment of interest semi-annually.

None of these bonds were sealed; none of them were given for money borrowed by the Commissioners, and none of them were sold for cash. They were all exchanged by the said Commissioners with the *Monticello and Port Jervis Railway Co.* for an equal amount of the capital stock of that company, for which the Commissioners
19 had subscribed. (See record, page 83.) The bonds were all alike as to form and substance; were dated May 1st, 1869, and were delivered to the officers of the company, $15,000 May 4th, and $133,000 May 12th, 1869. The first installment of interest was payable March 1st, 1870, and the coupons which fell due at that date; and on Sept. 1st, 1870, March 1st, 1871, and Sept. 1st, 1871, were paid with money raised by a tax under the provisions of said statute. No other or further interest was ever paid, and no money was raised by a tax for the payment of interest after 1870.
20 (Page 85 record.)

These bonds were transferred by said Railway Company to purchasers for value, and the plaintiff, Perrine, purchased the bonds and coupons in suit from Messrs. Gulick & VanKleeck who were residents of the State of New York, and paid value therefor, on the 21st day of July, 1875. At the time he purchased, the coupons from and after Sept. 1st, 1871, were attached to the bonds.

The coupons in suit were 147 in number, for $35 each, and were for the interest due on the 1st day of March 1872, and on the
21 1st days of September and March thereafter up to and including the 1st day of March 1875, and amounted with interest added to time of the trial to $6846.70, for which the verdict was ordered.

These bonds are in the words and figures following:

"No —— United States of America $1,000. The Town of Thompson, County of Sullivan, State of New York. This bond is a valid security, being issued by virtue of an act entitled "An act to
22 authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello in the county of Sullivan through the towns of Thompson and Forestburgh in said county of Sullivan and the town of Deerpark in the county of Orange to Port Jervis, Orange county,

passed May 4th, 1868, and of the act amendatory thereof, passed April 1st, 1869." Know all men by these Presents that the town of Thompson in the county of Sullivan and State of New York, by the
23 undersigned, Commissioners thereof, by virtue and in pursuance of the acts above entitled and referred to, and for value received, in the stock of the Monticello & Port Jervis Railway Company, promises to pay the bearer the sum of one thousand dollars on the first day of March, in the year 1899, at the National Union Bank in Monticello, N. Y., with interest at 7 per cent. per annum—payable semi-annually on the first day of March and September in each year at the National Hanover Bank of the city of New York, on the presentation and surrender of the coupons for such interest. In
24 witness whereof we have hereunto set our hands and seals, and have caused the coupons hereto annexed to be signed by W. H. Cady, one of our number, this first day of May in the year one thousand eight hundred and sixty-nine.

G. M. BENEDICT,
N. S. HAMILTON, } Commissioners.
W. H. CADY,

Registered in the County Clerk's office of the county of Sullivan, this first day of May, 1869.

25 C. L. MORRIS, County Clerk.

Immediately after the issue of these bonds, an action was commenced in the Supreme Court of the State of New York by the Attorney General of the State, on the relation of Charles T. Kilbourne and other taxpayers, against the said Commissioners, the Railroad Company, Messrs. Colt and Crowley (contractors) and the said town of Thompson.

The relief prayed for was that these bonds should be adjudged void and of no effect; that the negotiation thereof should be re-
26 strained, and that the stock taken in consideration thereof should be surrendered to the Company. A *lis pendens* was perfected by filing the complaint in the office of the Clerk of the County of Sullivan on the 3d day of July, 1869. (Record page 97.)

Answers were filed in behalf of all the defendants except the Town of Thompson, who demurred to the complaint, which demurrer was overruled with leave to plead over, by the Supreme Court at General Term, May 31st, 1870. (Record page 104.)

The cause was brought to trial at the Sullivan Circuit in
27 May, 1872, and a judgment rendered in favor of the plaintiffs, and a decree of the Court was entered therein in the Sullivan County Clerk's office, December 4th, 1872, in the words and figures following:

SUPREME COURT—SULLIVAN COUNTY:—The People of the State of New York, on the relation of Charles T. Kilbourne,

Samuel G. Thompson and all other tax-payers of the town of Thompson, Sullivan county, New York, Plaintiffs;

Against

Giles M. Benedict, Wm. H. Cady, Nathan S. Hamilton, Commissioners of the town of Thompson, in the county of Sullivan, appointed
28 under the act entitled "An act to authorize certain towns in the counties of Sullivan and Orange to issue bonds and take stock in any company now organized or that may hereafter be organized within three years after the passage of this act for the purpose of building a railroad from the village of Monticello in the County of Sullivan through the towns of Thompson and Forestburgh in the said County of Sullivan, and the town of Deerpark, in the county of Orange, to Port Jervis, Orange county." Passed May 4th, 1868; and F. C. Crowley, C. L. Colt and Wm. D. Colt, The Monticello &
29 Port Jervis Railway Company, and the Town of Thompson, in Sullivan County, N. Y., Defendants.

The defendant, the Town of Thompson, having interposed a demurrer to the complaint herein, and the said demurrer having been overruled by this Court at a General Term thereof with leave to the said defendant to answer the complaint upon the payment of the costs of the Demurrer, and the said defendants having failed to answer the said complaint, and the issues as to all the other defendants having been regularly brought to trial at a Circuit Court held in and
30 for the county of Sullivan, in May, 1872, and the decision of the Court therein having been duly filed, and no exception to the said decision having been served or filed, and no case made,

Now, on motion of F. C. Barlow, Attorney-General, it is adjudged, decreed and determined that the bonds heretofore issued by Giles M. Benedict, William H. Cady and Nathan S. Hamilton, Commissioners, and registered in the Sullivan County clerk's office and in miscellaneous records, page 427, May 1st, 1869, for one hundred forty-eight thousand dollars, which said bonds are described in the complaint in this action are and each of said bonds is void and of no effect and were issued by the said Commissioners without authority of law therefor; that the certificate and certificates of stock issued by the Mon-
31 ticello and Port Jervis Railway Company to the town of Thompson, and to the said Commissioners of the said town in consideration of said bonds and in exchange for the same shall be delivered up to the said Railway Company and cancelled, and that the said bonds and each of them shall be delivered up and cancelled. And it is further decreed, ordered and adjudged that each and every and all of the defendants or either and any of them be forbidden and perpetually enjoined and restrained from issuing, loaning or selling said bonds or any of them, and that the defendants and the said
32 Commissioners be perpetually enjoined and restrained from executing any other bonds on behalf of the town of Thompson upon the strength of the consents now on file in the said Clerk's office, which said consents are referred to and described in the complaint herein, and are also adjudged to be insufficient and of no effect.

further ordered and adjudged that the plaintiffs recover of the defendants in this action the sum of six hundred and three dollars for the costs and disbursements of this action, and that the plaintiffs recover of the defendant, the Town of Thompson, the further sum
33 of one hundred and eighteen dollars for costs and disbursements of the said Demurrer.

Dated November 21st, 1872.

F. W. JOHNSTON, Clerk.

The record of this action is contained on pages 87 to 110 of the record.

An *ad interim* injunction was granted by a Judge of the Court which was served with the summons, and was soon thereafter dissolved on special motion. (Page 85.)

Notwithstanding the said action and decree so entered, these
34 Commissioners continued to take part in the election of Directors of the Railway Company for about four years after their appointment. (Page 84)

The Railway Company was organized Sept. 2, 1868. (Page 111.)

This Company constructed and put in operation the railroad referred to in the consent of the tax-payers; it was completed in January, 1871, and is still in operation.

On the 28th of April, 1871, the Legislature of New York passed an act in the words and figures following:

35 CHAPTER 809.

AN ACT to legalize and confirm the acts of the commissioners of the towns of Thompson and Forestburgh, in the county of Sullivan, and of Deerpark, in the county of Orange, in issuing and disposing of the bonds of their respective towns, to build a railroad from the village of Monticello, in the county of Sullivan, to the village of Port Jervis, in the county of Orange, under chapter five hundred and fifty-three of the Laws of eighteen hundred and sixty-eight, and to legalize and confirm all bonds heretofore is-
36 sued by such commissioners, under said chapter of laws now held by or owned by bona fide purchasers.

Passed April 28, 1871; three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The acts of Nathan S. Hamilton, Giles M. Benedict and William H. Cady, commissioners on the part of the town of Thompson, and Silas T. L. Norris, Edwin Hartwell and James Ketcham, commissioners of the town of Forestburgh, in the
37 county of Sullivan, and of Orville J. Brown, Samuel O. Dimmick and Augustus B. Goodale, commissioners of the town of Deerpark, in the county of Orange, appointed in pursuance of an act entitled "An act to authorize certain towns in the counties of Sullivan and Orange, to issue bonds and take stock in any company now or-

ganized or that may hereafter be organized, within three years after the passage of this act, for the purpose of building a railroad from the village of Monticello, in the county of Sullivan, through the towns of Thompson and Forestburgh, in said county of Sullivan, and
38 the town of Deerpark, in the county of Orange, to Port Jervis," passed May fourth, eighteen hundred and sixty-eight, in issuing bonds upon the faith and credit of their respective towns, and in exchanging them for the stock of the company, organized for the purpose of constructing the railroad, contemplated by said act, are hereby ratified and confirmed.

§ 2. No bond or bonds issued or purporting to have been issued under the said act, and now held, owned or possessed by any person or persons, guardian, trustee or corporation, in good faith or
39 for a valuable consideration, shall be void or voidable by reason of any defect or omission in the consents in writing, of the tax-payers of the said towns of Thompson, Forestburgh and Deerpark, upon which such bonds were or purport to have been issued in or by reason of said consents, not stating the name of the railroad company in which the tax-payers so signing such consents, desired the bonds or the money arising from the sale thereof to be invested. But that the said bonds shall be as valid and effectual for every purpose, as if such defect or omission had not occurred, provided, that
40 such or any exchange of bonds by said commissioners for the stock of said company was made at the par value of the said bonds; and provided, further, that the respective issues of the said bonds by their commissioners, do not exceed the amount authorized by said act.

§ 3. No action or proceeding at law, commenced or pending, at the time of the passage of this act, shall abate or be discontinued, or be in any way affected by reason thereof; but the same may be prosecuted or defended, and judgment entered therein, and all pro-
41 ceedings taken to enforce the same, in the same manner as now provided by law, and with the like effect as if this act had not been passed.

§ 4 This act shall take effect immediately.

ERRORS ASSIGNED.

The following errors are assigned for which it is claimed the judgment should be reversed:

First.

At the close of the evidence the defendant's Counsel requested the Court to direct a verdict for the defendant, on grounds then particularly stated. This request was denied by the Court. Defendant's Counsel excepted.

42 *Second.*

At the request of Counsel for the plaintiff, the Court directed a ver-

dict for the plaintiff, to which defendant's Counsel excepted. (See Record, pages 85, 86)

Third.

Upon the trial after the introduction of the Judgment Roll in *The People ex rel Kilbourne et al vs. Benedict et al*, the defendant offered to prove by the Treasurer of the Railway Company, that the bonds received from the town Commissioners had not been delivered by the Railway Company to any purchaser, at the time of filing the complaint in that action. Plaintiff's counsel objected. The Court excluded the evidence. Defendant's counsel excepted.

43

The first and second exceptions present the case upon its merits for review, and involve the right of the plaintiff to recover upon the undisputed facts. The third exception will be considered in the course of the argument upon the merits of the case.

The following objections to the plaintiff's right to recover are urged and will be discussed in their order:

First.

The bonds from which the coupons in question were detached, were issued with a flagrant disregard of the statute, and in direct violation of its important provisions.

44

Second.

The defendant in error is not entitled to protection as a *bona fide holder*.

Third.

Chapter 809 of the laws of 1871, termed the validating act, is void for want of power in the Legislature to enact it. And in its scope is not broad enough to validate the bonds in question.

Fourth.

The judgment in *People ex rel vs. Benedict et al* is *res adjudicata* and binding upon the defendant in error.

ARGUMENT.

Before proceeding to a discussion of the questions presented by the plaintiff in error, in detail, we invite the attention of the Court to a proposition of a general character.

The case is not prejudiced by facts tending to create an estoppel.

The record does not present a case where the inhabitants of a municipality have consented to an issue of bonds, and remained silent until such bonds have been sold in the market to innocent purchasers; and until they have received and enjoyed full and complete consideration for their obligations.

An attempt was made to impose a debt of $148,000 upon a town valued by its assessment at $420,648. The whole number of tax-payers was 723, of whom 424 consented, and 299 objected. (Page 87.) The case shows an early, persistent, and continued resistance by this respectable minority to this threatened invasion of their common-law rights. (Pages 88 to 110.)

The bonds were issued and delivered to the officers of the railroad company in May, 1869. (Page 83.) An action was at once commenced in the Supreme Court of the State of New York, by the Attorney-General of the State, on the relation of these protesting tax-payers, and was continued until a final judgment was obtained, December 4th, 1872, adjudging the bonds void and of no effect, and directing the same together with the stock issued in consideration therefor, to be surrendered and canceled. (Page 109.) Subsequent litigation was had in the courts of the state, resulting in a similar adjudication by the highest Court of the State, to which reference will be made presently.

No interest money has been levied upon the town since 1870. (Page 85.) In that year a levy of interest was made through the action of the bonding commissioners under the statute; but the fact that this was a *forced* levy of money, and made while the tax-payers of the town were earnestly protesting against the entire proceeding divests the transaction of every element necessary to sustain an *estoppel*.

I

These bonds were issued without regard to important provisions of the statute, and in direct violation of those provisions.

First.

Section 2 of the statute requires as a basis of the proceeding, that the tax-payers shall, by a written consent to be signed, acknowledged and filed, state the amount of money to be *borrowed*, and the railroad company in the stock of which the money shall be invested; and in positive terms *prohibits* an issue of bonds until such consents containing such designations shall be

filed in the County Clerk's office. The language of the statute is as follows:

"But no such debt shall be contracted or bonds issued by "said commissioners of or for either of said towns or villages, "until the written consent shall have been obtained of a majority "of the tax-payers of such town or incorporated village. * * "Such consent shall state the amount of money authorized to be "raised in such town or village, and the railroad company in the "stock of which said money shall be invested, and shall be proved "or acknowledged in the same manner as conveyances of real "estate." (Page 74.)

These consents bear date May 16th, 1868. (Page 87.) The Railroad Company was organized Sept. 2d, 1868, (page 111) so that this statute could not have been, and was not complied with.

The giving of these consents embracing these important directions, is the only participation allowed to the town or its inhabitants in the creation of the proposed debt. This action required of the tax-payers is *jurisdictional* in its character, and was the basis of all further proceedings, without which no power whatever vested in the Commissioners to proceed.

The highest Court of the State has given this construction to the statute, and has adjudged the action of the Commissioners based upon these consents void and of no effect.

Horton vs. The Town of Thompson, 71 *N. Y. R.*, 513.

Other statutes similar to the one in question, or presenting the same question, have uniformly received the same construction by the Courts of that State.

People vs. Vanvalkenburgh, 63 *Barb.* 109, 1872.
People vs. Hughett, 5 *Lansing* 97, 1871.
People vs. Franklyn, 5 *Lansing* 135, 1871.
People vs. Adirondack Co., 57 *Barb.* 661, 1870.
People vs. Spencer, 55 *N. Y. R.* 1, 1873.
People vs. Knowles, 47 *N. Y. R.* 415, 1872.
People vs. Smith, 55 *N. Y. R.* 137, 1873.

Second.

These bonds were illegally issued in exchange for the stock of the Railroad Company, and were therefore void in their inception.

Section 2 of the statute is as follows:

"The said commissioners authorized by this act may, in "their discretion, dispose of such bonds or any part thereof to "such persons or corporations, and upon such terms as they "shall deem most advantageous for their said town, but not for "less than par; and the money that shall be raised by any loan "or sale of such bonds shall be invested in the stock of such "company," &c.

This provision of the statute has been construed by the

highest Court of the State, as a positive *prohibition* of an issue of bonds except for cash and at par.

Horton vs. Town of Thompson, supra.

This construction was directly approved by this Court at the October term, 1879.

The Town of Scipio vs. Wright, 101 *U. S.* 665.

Other statutes similar in terms have uniformly received the same construction by the courts of that State.

State of Illinois vs. Dellafield, 8 *Paige* 528, 2 *Hill* 159, 26 *Wend.* 192, 221. In this case (2 *Hill* 172) Justice Bronson said, "It is a question about *par value*, and if that does not mean in this case a dollar in money for every dollar of security, the wit of man cannot tell us what it does mean."

Starrin vs. Town of Genoa, 23 *N. Y. R.*, 439.

Gould vs. Town of Sterling, 23 *N. Y. R.*, 456.

People vs. Mead, 24 *N. Y. R.*, 124, 1861.

In the case of Gould vs. the Town of Sterling, Justice Seldon remarked, "If what was done was the same in effect as if "the money had been borrowed and paid over to the railroad "company, the difference in form would not be material. But "it is plain that neither in respect to the railroad company nor "the town was its effect the same. If the statute had been pur-"sued, the company would have had a sum equal to the par "value of the bonds to expend upon the road. As it was, they "were compelled to sell the bonds at a discount, in order to re-"alize the money. If they could sell at a discount at all, they "could of course sell at any sacrifice however great."

The true spirit of the objection is, the statute intends that the railroad company shall have money instead of *town paper* with which to construct the road. And when money is borrowed it protects the fund and secures its application to the purpose for which it is intended. If the bonds shall be exchanged for stock, they are taken from under the protection of the statute, and become the property of the company, and may be sacrificed or squandered, without redress in behalf of the town, who by the transaction becomes a *stockholder*.

The same difficulty exists in the transaction complained of here. Instead of having money as the statute contemplated, the company received this paper which sold in the market much below par. (Pages 81, 82.) The conclusion is irresistable that the road did not receive the aid contemplated by the statute; the cost of construction was greater than if a contract could have been made therefor on a cash basis; and the transaction was not the same in effect as if the money had been borrowed and paid over to the company.

The Court will observe, that the statute which was the subject of construction by *Justice Seldon* in the case cited, contained no prohibitory terms, but simply conferred authority to *borrow money* and to invest the same in the stock of the R. R. [illegible] the city

Company; and the question considered by Justice Seldon was, whether what was done was a *valid execution of such authority.* Further on in the opinion, Justice Seldon refers to a statute which was passed amending the charter of the city of Rochester, containing precisely a similar prohibitory clause to that contained in the statute here, and states the reasons why the legislature did not attach the same prohibition to the statute then being construed by him.

This feature of the statute construed by the Court of Appeals in that case was also noticed by this Court in *The Town of Venice vs. Murdock*, 92 *U. S.*, 494; in which Justice Strong regarded the opinion of Justice Seldon as going upon what should be considered a question of general law, and not one of statutory construction. This was said in view of the fact that *Murdock* was a *bona fide holder.*

Third.

There is another objection to these bonds, which was not brought to the notice of the Court of Appeals of New York in the case of *Horton.* They were not issued under the *hands and seals* of the Commissioners. The statute provides as follows:

"It shall be lawful for such commissioners to borrow on the "faith and credit of their respective towns and villages aforesaid, such sum of money, &c., * * * and to execute bonds "therefor under their hands and seals respectively." (Page 74.)

It will be noticed that the statute of 1868 does not confer upon the town, as a *corporate body*, power to contract a debt. It provides an arbitrary manner in which the bonds of the town shall be issued. The Commissioners who are to execute the bonds are not chosen by the people, but receive their appointment from a power outside of the town; they therefore have no *implied or incidental* power to bind the corporate body, and can only do so in the manner pointed out by the statute giving them power to act. They are in no sense town officers.

Sheboygan Co. vs. Parker, 3 *Wall*, 96.
Wilson vs. Salamanca, 9 *Otto*, 504.
Horton vs. Town of Thompson, supra.

It would seem that this statutory direction would be as well observed without the hands or signatures of the commissioners as it is without their seals.

This question was ably discussed and decided by Justice Johnson in the second Circuit, and a judgment reversed on this ground alone.

Avery vs. Town of Springport, 14 *Blatchford's R.*, 372.

In *Anthony vs Jasper County*, 101 *U. S.*, 693, the statute provided that the bonds should be registered and countersigned by the State Auditor; which was not done. This Court said: "There can be no doubt that it is within the power of a State to

prescribe the form in which municipal bonds shall be executed, in order to bind the public for their payment; if not so executed they create no legal liability."

A purchaser may have an equitable right "but he cannot enforce the payment, or put them on the market as commercial paper."

In *McGarrahan vs. Mining Co.*, 96 *U. S.* 316, as to the validity of a land grant, this Court said:

"Each and every one of the integral parts of the execution "is essential to the perfection of the patent. They are of equal "importance under the law, and one cannot be dispensed with "more than another. Neither is directory but all are mandatory. The question is not, what in the absence of statutory "regulations would constitute a valid grant, but what the statute requires. Neither the signing, nor the sealing, nor the "countersigning can be omitted any more than the signing, or the "sealing, or the acknowledgment by a grantor, or the attestation by witnesses, when by the statute such forms are prescribed for the due execution of deeds by private parties for the "conveyance of lands. It has never been doubted that in such "cases the omission of any of the statutory requirements invalidates the deed."

A seal is necessary when required by statute. And when the instrument has the seal attached it may be shown that it was attached wrongfully by a party having no power to do so.

Keohler vs. Black River Ins. Co., 2 *Black*, 715.

The principle sustained by numerous authorities, that where negotiable paper is signed and delivered in blank, the holder is intrusted with power to complete the instrument, has no application to instruments created under statutory proceedings. A statutory power cannot be delegated.

Bank of Pittsburg vs. Neal et al, 22 *How U. S.*, 96.

The case of *San Antonio vs. Mehaffy*, 6 *Otto*, 312, does not decide the question. An election had been regularly held, all the votes cast, but three, were in favor of subscription; bonds were issued by officers of the corporation, and there was a full recital of the proceedings on the bond. The statute was in these words: "May issue bonds, or otherwise pledge the faith of the city." It was held that the securities "were not bonds because they were not sealed; * * they are within the latter category." Justice Swayne said: "If that clause were not in the statute we should have no difficulty in holding that the city

was, *under the circumstances*, estopped from denying thei validity.

This question does not involve the doctrine of *ultra vires.*

II

The defendant in error is not entitled to protection as a bona fide holder.

First.

The defects complained of are all apparent upon the record of the proceedings by which the bonds were issued, and upon the bond itself. A purchaser certainly cannot claim ignorance of the statute, under the authority of which he claims the bonds were issued; it is referred to in the bond. It is said by this Court: "Every dealer in municipal bonds which upon their face refers "to the statute under which they were issued, is bound to take "notice of all its requirements."

McClure vs. Township of Oxford, 4 *Otto*, 429.

He cannot claim ignorance of the defects in the consents, because by this statute they are required to be filed and become a public record of the county.

The cases go no farther than to hold that where the record is complete upon its face, although the appearances may be false, it is conclusive in favor of an *innocent purchaser*. There is absolutely no case which holds, that where the defects are apparent upon the face of the record a purchaser is not bound by a knowledge of them.

The want of a seal is shown by the bond itself.

And the fact of the illegal exchange of the bonds for the stock of the company is recited in the bond. (Page 86.)

Courts have gone to great lengths in holding municipalities bound by false recitals, and false records, and the doctrine is well established in this Court that a purchaser is subject to the same rule; especially where the recitals are true.

McClure vs. Township of Oxford, 4 *Otto*, 429.

Bates vs. Winters, 7 *Otto*, 83.

The general principle to be gathered from the decisions is, that a person dealing with a corporation, especially in matters outside of its ordinary purposes, is bound to enquire into the authority of the agent through whom the transaction is made; and is bound by a knowledge of a defect in the agent's authority not peculiarly within the knowledge of the agent.

Floyd acceptances, 7 *Wall*, 675.

Marsh vs. Fulton County, 10 *Wall*, 683.

Mayor vs. Ray, 19 *Wall*, 478.

Farmers and Mechanics' Bank vs. Butchers and Drovers' Bank, 16 *N. Y. R.*, 137.

Second.

There was a total want of power in these Commissioners to issue these bonds; indeed there was a *positive prohibition* until the requisite consents were filed. And no instrument could be brought into existence without both the hands and seals of the Commissioners.

The bonds were absolutely void, and negotiabilty could not impart validity to them.

In *Township of East Oakland vs. Skinner*, 4 *Otto*, 255, this Court said:

"Where there is a total want of authority for issuing municipal bonds there can be no *bona fide* holding of them."

In *Anthony vs. County of Jasper*, 101 *U. S.*, 693, this Court said: "Every person who deals with or through an agent assumes the risk of lack of authority in the agent to do what he does. Negotiable paper is no more protected against this inquiry than any other."

The same doctrine was held in *Marsh vs. Fulton County*, also *in re Floyd acceptances*, *supra*, and in many other cases which it is unnecessary to *cite*.

Also in *McClure vs. Township of Oxford*, it is said:

"If any of the essential proceedings prescribed by law for "intrusting municipal officers with power to subscribe for stock "and issue bonds in payment therefor, be dispensed with, the "bonds will be invalid in the hands of all who cannot claim pro-"tection as *bona fide holders.*"

In the case of *Horton vs. The Town of Thompson*, the New York Court of Appeals adjudged these bonds void in whosoever hands they may be.

III

These bonds being void it was not within the power of the Legislature of New York to impose them as a debt upon the town.

First.

Chap. 809 of the laws of 1871, termed the validating act, is void and of no effect. It was so adjudged by the highest court of the State.

Horton vs. Town of Thompson.

This decision settles the law of New York applicable to the bonds in question. They being solely the creatures of statutory enactments, must be judged exclusively by the law of the State where it is claimed they were created.

This principle is so firmly rooted in our jurisprudence, and so fundamental in its character, that a citation of authorities is unnecessary.

The rule is equally fundamental, and well established, that this Court will look to the decisions of the highest Court of a State to ascertain what the law of the State is, pertaining to questions of a local nature.

Whether a pretended statute is a law, or not a law, and if a law, how it shall be construed, are, as a rule, questions exclusively for the Courts of the State to settle. This rule has its foundation in the federal judiciary act.

This Court has had frequent occasion to apply this rule.

Green vs. Neals lessee, 6 *Peters*, 29.
Shelly vs. Guy, 11 *Wheaton*, 351.
Gelpcke vs. City of Dubuke, 1 *Wall*, 175.
Christy vs. Pridgeon, 4 *Wall*, 203.
Elmwood vs. Marcy, 2 *Otto*, 292.
Town of South Ottawa vs. Perkins, 4 *Otto*, 260.
Town of East Oakland vs. Skinner, 4 *Otto*, 259.
Fairfield vs. County of Gallatin, 100 *U. S.*, 47.
Lippincott vs. Mitchell, 4 *Otto*, 170.

In *Gelpcke vs. City of Dubuque*, and many cases of a similar character, the doctrine was broadly declared, that the decisions of the highest Court of a State, when made, become so firmly a part of the law of that State, that they cannot be overturned by a subsequent decision to the prejudice of vested rights. And in this respect they are placed on the same footing as a statute of the State. Exceptions to the rule take from under its operation, questions of *general or commercial law*.

These exceptions exist in the interest of commerce, and for the protection of foreign *bona fide* creditors; and are in strict harmony with the purpose and spirit of the federal constitution, and the federal judiciary system. Under these the people of all the States are to be regarded as one people for commercial purposes; and this Court is organized with a jurisdiction as broad as the States, with plenary powers to protect the common interest of the whole; to the end that for this one people, upon questions affecting their common interest, there shall be but one law.

These exceptions exist for a purpose, and in a case where it appears from the nature of the controversy, or from the relation of the party to it, that such purpose will not be subserved by a conflict of decision between the Federal and State Courts, the rule, founded in judicial *comity*, should prevail.

Second.

The defendant in error, is not in a position to ask of this Court a different decision from that rendered by the Court of Appeals of New York.

As a [illegible]

considerations than the resident creditor from whom he purchased. His standing in this Court rests entirely upon his *residence* in anther State. He has not made a contract with the State or any of its inhabitants, upon the faith of a declared law of the State, which the Courts of the State are inclined to overturn to the prejudice of vested rights. He purchased these bonds in the city of New York, from a resident of that city, in July, 1875, with nearly four years of due and unpaid coupons attached.—(Page 82.) The Supreme Court of the State had, in 1872, adjudged them void and of no effect. (Page 109.) The Court of Appeals of the State had, in three reported cases, distinctly held that an issue of bonds in exchange for the stock of a railroad company, under statutes similar to the statute referred to in the bonds which he purchased, was an illegal and void transaction. It had been declared as the law of the State, through reported cases from the Supreme Court and the Court of Appeals, that the failure of the tax-payers to perform the trust confided to them in the first instance, rendered all further proceedings in the issue of bonds void. (See cases cited above on page 12.) And the Court of Appeals had declared the law in three reported cases, that there was no power vested in the Legislature of that State to legislate a debt into existence, neither against municipal corporations or against individuals.

New York & O. M. R. R. Co. vs. Van Horn, 57 *N. Y. R.*, 496.
People vs. Ingersoll, 58 *N. Y. R.*, 30.
People vs. Batchellor, 53 *N. Y. R.*, 496.

Hence, six years after this town paper was set afloat, and three years after it had been judicially condemned by the Courts of the State, and with the law of the State established, that a debt could not be forced upon the town by mandatory legislation, the defendant connected himself with these void obligations, with four years of dishonored coupons attached; bound by a knowledge of the provisions of the statute under which they were made, and of their illegal issue, and of their defective *execution;* clearly, not relying upon any law of the State, but trusting to the federal courts to establish a different law from that prevailing in the State.

He could not rely upon this validating act, for reasons already stated; and for the further reason that this statute, by the exception contained in the 3d section, brought notice to him of the pendency of the action, by which these bonds had been condemned. (Page 79.)

The defendant cannot invoke any principle of the common law, or of the *Law Merchant.*

Bonds of this character have no foundation whatever in the common law; they can be brought into existence only through statutory enactments which are universally conceded to be in derogation of common law principles. He is therefore in no better or different position than the party from whom he pur-

chased. He took these securities *cum onere*, subject to the same conditions and the same law which would govern them in the hands of his vendor; if they are void in the hands of one, they are void in the hands of the other; and they must stand or fall by the law of the State where they were made.

The reasoning of His Honor Justice Bradley, in *Town of South Ottawa vs. Perkins* has a peculiar application here. He said:

"That which purports to be a law of a State is a law, or i "is not a law, according as the truth of the fact may be, and no "according to the shifting circumstances of parties. It would "be an intolerable state of things if a document purporting to "be an act of the Legislature could thus be a law in one case "and for one party, and not a law in another case and for an "other party; a law to-day and not a law to-morrow; a law in "one place and not a law in another in the same State. And "whether it be a law or not a law, is a judicial question to be "settled and determined by the courts and judges."

And in applying the rule of *comity* he said:

"Otherwise, we should have the strange spectacle of two "different tribunals, having co-ordinate jurisdiction in the same "State, differing as to the validity and existence of a statute of "that State, without any power to arbitrate between them."

If this defendant can recover upon these bonds, his vendor, in whose hands they were utterly void, could have recovered also by shifting his residence to another State. Then, indeed, the validity of this statute would depend entirely upon *the shifting circumstances of parties.*

Third.

It is urged by our opponents that the case of *Horton vs. The Town of Thompson*, is not a case of constitutional construction, in that the opinion given does not refer to any specific provision of the State Constitution. To this we answer:

1*st.*

The decision, nevertheless, establishes the law of the State that power to enact this statute did not exist in the New York Legislature, and that the statute is not a law. This is sufficient against a party whose claims must be determined by the law of that State.

2*d.*

As the Legislature of a State is supreme except as its powers are limited by the organic law; and as all questions of legislative power can only be determined by an investigation of the limitations of the Constitution, by which that body is created, it

must be assumed that the decision was made in view of all the limitations or restrictions contained in that instrument.

3d.

The Court in the case cited, declared the settled law of that Court, which had been adjudged in previous cases, where the scope and restrictions of the Constitution were the subject of discussion and decision.

In *The Midland R. R. Co. vs. Van Horn:* An attempt to legislate a debt into existence was held to be a violation of Art. 1, section 6, which provides: "No person shall be deprived of life, liberty or property without due process of law."

Van Horn had subscribed to the capital stock of the railroad company under a statute which required, as a condition to a valid subscription, *ten per cent.* of the subscription to be paid in money: this condition was not complied with. By a subsequent statute it was provided that no subscription theretofore made should be invalidated, or avoided, by reason of the non-payment of ten per cent. in money at the time of subscription. The statute was held void as stated.

In that case the statute applied to a class of individuals who had *separately* become subscribers to the capital stock of the company.

The case at bar is precisely the same in principle. The facts differ in this respect, that this statute attempts to impose a debt upon a class of individuals *collectively*, who have not gone through with the formality of making a contract of any sort.

It is an old doctrine that municipal corporations, beyond the object of their organization as mere instrumentalities of Government, may be endowed with a *private franchise*. And when the inhabitants of the municipality accept such legislative grants of power, and exercise such privileges, they act as a private company. This is the doctrine of the Court of Appeals of New York, and of this Court.

People vs. Batchellor, supra.
Baily vs. Mayor of New York, 3 *Hill*, 539.
Angel and Ames on Corporations, Chap. 1, *Sec.* 32, 33.
Dartmouth College vs. Woodward, 4 *Wheat.*, 688.
Town vs. Common Council, 3 *Peters*, 907.
Bank of U. S. vs. Planters Bank, 9 *Wheat.*, 907.

In the last case cited, Ch. J. Marshall said: "It is a sound principle of law, that when a government becomes a partner in a trading company, it divests itself of its sovereign character, and takes that of a private citizen."

In *Maxmillian vs. Mayor*, 62 *N. Y. R.*, 164, the two-fold capacity of municipal corporations was clearly defined.

The statute of 1868 grants to the municipalities all the immunities and privileges of a private stockholder, and they can-

not therefore be affected by mandatory or retrospective legislation, any more than an individual.

This distinction is clearly traced in this Court.

County vs. Huidekoper, 98 *U. S.* 98.

In *People vs. Ingersoll*, 58 *N. Y. R.*, 30, the same principle is distinctly applied, and the power to make a debt against municipality, without the concurrence of the people, is denied construing Section 12 of Art. 7, which is as follows:

"Except the debts specified in the tenth and eleventh sections "this article, no debt shall be hereafter contracted by, or on b "half of this State, unless such debt shall be authorized by a la "for some single work or object, to be directly specified therei " * * * * * No such law shall take effect until it shall hav "been submitted to the people, and have received a majority "all the votes cast for and against it at such election."

Power to tax for general or local purposes, is one thing; power to make debts is entirely another and different thing. Each of these powers is guarded and regulated by different and distinct provisions of the New York Constitution, Articles 3, 7,

In the *People vs. Batchellor*, these powers were the subject of discussion and decision; and many cases were reviewed in which the limitations of the State Constitution had been construed and applied.

Taylor vs. Porter, 4*th Hill*, 140.
People vs. Morris, 13 *Wend.*, 325.
Sweet vs. Hurlbert, 53 *Barb.*, 312.

Fourth.

The decisions of the Court of Appeals of New York are not conflicting, regarding the law as declared in *Horton vs. The Town of Thompson.*

They trace, and establish a distinction between statutes which are *remedial and curative* and those which are *mandatory.* It has been repeatedly held in that Court that statutes coming within the former class are valid; and such we believe to be universal law. Of this class of cases are the following both in the *Court of Appeals* and *Commission of Appeals:*

People vs. Mitchell, 35 *N. Y. R.* 551.
Williams vs. Town of Duanesburgh, 66 *N. Y. R.* 129.
Town of Duanesburgh vs. Jenkins, 57 *N. Y. R.*, 177.

The same principle is well established in this Court.

Thompson vs. Lee Co., 3 *Wall*, 327.
Ritchie vs. Franklin Co., 22 *Wall.*
City vs. Lamson, 9 *Wall*, 477.
Beloit vs. Morgan, 7 *Wall*, 619.
Gelpcke vs. City of Dubuque, 1 *Wall*, 220.

And in many other cases, in both courts, the same principle is uniformly declared. But we believe that in no case where conditions have been disregarded, which were *jurisdictional*

their character, has it been held that power exists in any legislative body to cure the evil.

Fifth.

If this could be regarded as an open question, an examination would show that the decisions of the Court of Appeals of New York, are not in conflict with the decisions of this Court.

The case of *People vs. Batchellor* acknowledges the doctrine held in *Olcott vs. Supervisors of Fond du Lac*, and other similar cases in this Court, viz: That enabling statutes come within the taxing power, and are valid. The same was held in *Bank of Rome vs. Village of Rome*, 18 *N. Y. R.*, 38, and *Clark vs. City of Rochester*, 28 *N. Y. R.*, 605. The distinction is made between an *enabling* and a *mandatory* statute, where the object is to aid a *quasi* private enterprise. In *The Town of Queensbury vs. Culver*, 19 *Wall, at page* 91, this distinction was recognized by this Court; and in referring to the case of *The People vs. Batchellor*, Justice Strong said, that if the case was broad enough to cover the case he was considering, he would feel constrained to follow it. The same principle is substantially declared in other cases in this Court.

Elmwood vs. Marcy, 2 *Otto*, 292.
Town of South Ottowa vs. Perkins, 4 *Otto*, 260.
County vs. Huidekoper, 98 *U. S.*, 98.

The same has been thoroughly considered and decided by the Supreme Court of Wisconsin.

Wahlschlager vs. Town of Liberty, 23 *Wis.*, 362.
The City of Milwaukee ads. Hasbrouck, 13 *Wis.*, 37.

In the case at bar, the defects grow out of acts which were expressly *prohibited* by the statute. There was no condition in the law upon which such an issue of bonds could be made. The tax-payers were not authorized to give the consent of the town to such an issue; and they did not. The language of the consent is "to borrow money." And the bonds could only be brought into existence by both the hands and seals of the Commissioners.

Here was neither a contract, nor the form or shadow of one, which could be recognized by any court in the light of any statute, or principle of law known to men.

The question then is, not whether an *irregular execution* of a *vested* power may be *remedied*, but whether the Legislature can bring a debt into existence against this corporate body by legislation *proprio vigore*.

It would seem, that to *force* a contract upon the parties to

be bound, the very essence of which is a free voluntary consent is an impossible thing to do.

IV

The act of 1871 *contains an exception which takes from under its operation the bonds in question.*

First.

Section 3 is in the following words:

"No action or proceeding at law, commenced or pending at "the time of the passage of this act, shall abate or be discon- "tinued, or be in any way affected by reason thereof; but the "same may be prosecuted or defended and judgment entered "therein, and all proceeding taken to enforce the same in the "same manner as now provided by law, and with like effect as "if this act had not been passed."

At the time of the passage of this act the action of *The People vs. Benedict et al* was pending in the Supreme Court of the State, in which the General Term of that Court had rendered a decision upon *demurrer* adjudging these bonds void. (May 31st, 1870. Page 104.) *See opinion of the Court not reported.*

This action proceeded regularly to a final judgment, declaring the whole proceeding void, and cancelling the stock which the Commissioners had taken in consideration for the bonds.

It is clear from this section of the statute, that the Legislature did not intend to legislate in regard to bonds which were then the subject of litigation, but did intend to allow such bonds to receive the fate of judicial action.

And the act itself is notice to all who should attempt to rely upon it of the *pendency* of all actions then in course of prosecution. It was sufficient to put all purchasers of the Thompson bonds on inquiry; and no purchaser who claims to rely upon this validating act, to uphold his bonds, can claim ignorance of the pendency of the action of *People vs. Benedict and others.*

Second.

Upon the doctrine of *lis pendens* which is well grounded in the common law, and which has been universally recognized by the courts of this country, both State and Federal, the purchasers of these bonds were bound by the decree of *People vs. Benedict et al.*

In *Horton vs. The Town of Thompson*, the Court of Appeals disposed of the case on other grounds. Justices Allen and Folger were also for reversal "on the ground that the plaintiff purchasing the bond *pendente lite* was *estopped* by the judgment in *People vs. Benedict*, setting aside and cancelling the bonds, full effect being given to that judgment by the act of 1871."

Other members of the Court expressed no opinion on the question.

It will be observed that *People vs. Benedict et al* was an action *in rem;* no personal claim was made against any party. It was commenced for the purpose of obtaining an adjudication as to the existence or non-existence of these bonds. The *lis pendens* was perfected by filing the complaint July 3d, 1869.—(Page 97.)

Upon the trial of this action, the plaintiff in error offered to prove by the Treasurer of the railroad company, then on the witness stand, "That the bonds had not been delivered by the railway company to any purchaser, at the time of filing the complaint in the case of *The People ex rel Kilbourne et al vs. Benedict et al.*

This evidence was excluded by the Court and an exception taken. (Page 85.) If it had been admitted it would have shown affirmatively, that at the time of perfecting the *lis pendens* all of the bonds issued were in the hands of parties to that action, and were transferred *pendente lite.* If the case is not perfect upon this point without the evidence offered, the judgment *should be reversed for the error in excluding it. But as there is no pretense or evidence in the case* that these bonds had passed beyond the hands of the railroad company, we may fairly assume that they were held by that Company when the complaint in that action was filed.

The general principle, and the exceptions to it, as defined by Chancellor Kent, in the old Court of Chancery of New York, and more recently announced by the Court of Appeals of that State, has met the entire approval of this Court

County of Warren vs. Marcy, 97 *U. S.* 96.
Town of Brooklyn vs. Ins. Co., 9 *Otto,* 362.
Black vs. Commissioners, 9 *Otto,* 692.

The case at bar does not come within the exceptions as stated in the leading cases.

Murry vs. Ballou, 1 *Johns., Ch.* 566.
Murry vs. Lylburn, 2 *Johns., Ch.* 441.
Leitch vs. Wells, 48 *N. Y. R.,* 585.

The bonds in question never had a legal existence; they were void upon their face, and are not negotiable under the *Law Merchant.* The defendant purchased with a full knowledge of their infirmities. They are therefore on the same footing as a bond and mortgage, or other *choses* in action, which cannot *improve* by a sale and transfer to third parties.

We respectfully submit that the judgment should be reversed.

T. F. BUSH,
Counsel for Plaintiff in Error,
Monticello, N. Y.

Supreme Court of the United States

ORLANDO PERRINE,

Defendant in Error,

ads

THE TOWN OF THOMPSON,

Plaintiff in Error.

Brief of Mr. EVARTS. for Defendant in Error.

Thomas McGill & Co., Law Printers, Washington, D. C.

Supreme Court of the United States.

No. 282.

ORLANDO PERRINE, DEFENDANT IN ERROR,

vs.

THE TOWN OF THOMPSON, PLAINTIFF IN ERROR.

BRIEF FOR DEFENDANT IN ERROR.

FACTS.

The brief for the plaintiff in error presents the facts and the statutes involved so fully as to need but few additional citations from the record on the part of the defendant in error.

First. It is to be noted that the original enabling statute gives to the Commissioners very liberal discretion as to the disposition of the town bonds placed in their hands to furnish aid to the projected railroad.

"The said Commissioners authorized by this act may, in their discretion, dispose of such bonds, or any part thereof, to such persons or corporations, and upon such terms as they shall deem most advantageous for their said town, but not for less than par, and the money that shall be raised by any *loan* or sale of said bonds shall be invested in the stock of such company now organized, or that may hereafter be organized," &c.

Section 3 of Act, Record, p. 74.

"The Commissioners respectively, in the corporate name of each of their said towns or villages aforesaid, may subscribe for and purchase stock of such company to the amount they may have severally borrowed as aforesaid, and by virtue of their said subscription *or* purchase of stock, and upon receiving certificates *or* the transfer of certificates for the amount of said stock so subscribed for and purchased by them, the said towns or villages" shall acquire rights and be liable as other stockholders.

Same section, Record, p. 75.

Section 9 of the act provides for a joint and several bond by the Commissioners and two sureties to the supervisor of the town, *to the amount of bonds issued by said town*, conditioned for the faithful discharge of their duties, &c. This bond is to be lodged with the supervisor for collection, for the use of the town, in case of breach of condition.

Record, p. 76.

Section 10 provides for removal of any Commissioner on application of twelve freeholders of town.

Record, p. 77.

These provisions do not limit the sale of bonds to *cash*, nor do they prohibit raising means by loan on a pledge of the bonds.

It is not pretended that the holder of these bonds is affected with any notice of the actual exchange by the Commissioners of these bonds for stock subscribed for. The range of discretion in the Commissioners is important as showing that the whole scheme of the statute, financially, was that the town should receive, on subscription *or* purchase of the stock in which they were *compelled* to invest, a stock to which the town bonds had furnished cash means equal to their par value towards building the road.

This result secured the two objects of the law: (1) that

the town should be held for no amount beyond the stock it took at par, and (2) that the stock should get from the bonds, as means for the enterprise, the faculty of cash payment, in construction, to the amount of the bonds.

Under this statute, then, the recital of the bond with which their purchases are affected is as follows:

"This bond is a valid security, being issued by virtue of an act entitled, &c.

"Know all men by these presents, that the town of Thompson, &c., by the undersigned Commissioners thereof, by virtue and in pursuance of the act above entitled and referred to, *and for value received in the stock of the Monticello and Port Jervis Railway Company*, promises to pay the bearer the sum of one thousand dollars."

This statement of "value received" was wholly unnecessary, unless to make it apparent that the town had, or would have, as a resource for meeting its bond, the statutory equivalent of its face—that is, the railway stock which it was to buy, and which was held, by the statute, to supply to the town the means by dividends to meet the interest on the town bonds, and by the sale or value of the stock to cancel, purchase, or redeem the bonds.

Act, sections 4, 5, 6; Record, pp. 75, 76.

The *notice*, then, that this bond carried *on its face* was, that the issue was by authority of and conformably to the statute, and that it procured for the town the "value received" which the statute required, to wit, the stock of the railway.

The assumption that *from the face of the bond* the purchaser thereof had notice that the town had become or would become possessor of the railway stock contrary to the act, seems careless. The Commissioners never proposed such a construction, the takers never conceived such a construction, and a purchaser for value must be affected with notice of some *actual transaction at variance with the law* before he can lose his strong defense against unknown infirmities.

Certainly this coroboration of the security he buys, that his obligor not only has, but must keep, hold, and apply to its payment the statutory "value received" to obtain which its issue was authorized by law, cannot disparage the security in the purchaser's hands.

Of course the bonds were framed with this recital long before they were issued or their disposition made. The recital, therefore, is not of *an act of negotiation*, but of *a trait of the security*.

Second. The facts under which the bonds inured to their full par value in money to the means of building the railroad, according to the design of the enabling act upon its strictest construction, are apparent and conclusive to this effect on the record.

These bonds are dated May 1, 1869, and the Commissioners soon after subscribed for the railway stock, and delivered the bonds to the company.

Record, fols. 188, 189, 261, 262.

Prior to these dates, and in March 11, 1869, the railway company had made a contract with responsible contractors to build the road complete for $718,750.

This amount was paid to the contractors in cash, and in town bonds and in first-mortgage bonds of the company as cash, both securities being taken at their par value.

All the town bonds were thus paid by the railway company to the contractors *as cash*, and were so received by them.

There is no evidence that the contractors did not realize from the disposition of the bonds, and apply to the construction of the road, their full par value.

Record, fols. 241–244, 263.

Third. The integrity of every step in the negotiation of the bonds, whereby they came to be the property of the plaintiff below for value, without notice or suspicion on the part of himself or his vendors of any infirmity of the bonds, either in respect of the warrant for their issue or the mode of putting them on the market, is indisputable upon the record.

The plaintiff below bought the bonds at the usual public sales-room for stocks, bonds, and other securities in the city of New York, at an auction sale, July 21, 1875, paying cash for them.

Record, fol. 185.

His vendors were Gulick & Van Kleeck, well-known and long-established merchants in the city of New York. They purchased eight bonds in September, 1869, of the National Bank of Port Jervis at ninety cents on the dollar for cash. The purchase was made without any notice of the "Benedict suit," or of any irregularity in the bonds, or of any defense to them.

Record, fol. 184.

They bought eighteen bonds from the Bond-street Savings Bank of New York, February 19, 1875, at seventy cents on the dollar.

Record, fols. 182, 184.

The Bond-street Savings Bank (originally called Atlantic) bought $50,000 of these bonds from the well-known banking house of Vermilyea & Co., at 82½ per cent. cash. They were without notice of any suit, litigation, defect, or irregularity.

Record, fols. 179, 181.

The coupons on these bonds were paid at the Hanover Bank, in New York, for March and September, 1870, and

1871; those of the last year not till 1874. These coupons were paid by taxation of the town providing the money.

The stock of the railway company remained in the hands of the Commissioners who received it, till May, 1870, and was then handed over to their successors.

The railroad was completed in January, 1871, and has been in operation ever since.

Record, fols. 185, 181, 188–90.

Fourth. The state of facts upon which the remedial act ratifying the bonds was passed, supports at once the justice of this legislation and enforces its benign and efficient execution by judicial authority.

This act was passed April 28, 1871.

SEC. 1. All the acts of the Commissioners in issuing the bonds and exchanging them for the stock of the railway company, are "ratified and confirmed."

SEC. 2. No bond now held "in good faith *or* for a valuable consideration," shall be void or voidable by reason of any defect or omission in the consent of the taxpayers, provided the exchange of bonds for stock was made at par value of the bonds, and that the issues do not exceed the amount authorized by the act.

SEC. 3. Saves pending suits from abatement and allows them to go to judgment.

It will be noticed that this act was passed upon the legislative survey of the completed transaction, and of the relation the towns, the public, the railroad company and its stockholders, the bondholders, and the honor and duty of the State held to the completed transaction.

What other solution of the situation would have been just or tolerable, either to the local communities, the individual interests, or the character of the State, has not been suggested in argument or by judicial reasoning in the course of this litigation.

Fifth. The nature of the equity su. ;s to parties, subject-matter, interlocutory proceedings, and final judgment, requires a more complete and explicit statement than is shown in the plaintiff's brief.

This suit was commenced in June, 1869, by the Attorney-General, in the name of the People, in the relation of two taxpayers of the town of Thompson.

The defendants were the town Commissioners, the town itself, the railway company, and the contractors for building the road.

Its object was a rescission of the exchange of bonds and stock between the Commissioners and the company, and a perpetual injunction against the *defendants* restraining them from "using, loaning, or selling the bonds."

Record, fols. 203, &c., 225, 226.

An *ex-parte* injunction was issued on filing the complaint, June 24, 1869.

Upon full argument this injunction was vacated, with costs to the defendants, July 27, 1869.

From this order no appeal was taken.

Nothing was done in this suit until a trial, May 20, 1872, before a judge, without a jury, "the proofs being uncontradicted." Upon the result of this trial a judgment was entered in behalf of the people for rescission and injunction, according to the prayer of the complaint.

These proceedings seem to have been as upon default. No proceedings seem to have been taken to bring the stock or bonds into court, to bring parties in by advertisement or otherwise, and apparently no results have followed from this judgment in the dark and in the air, except the provision for costs.

It may seem surprising that an Attorney-General should proceed with such a suit, and to such a judgment, after the passage of the ratifying act of 1871.

POINTS.

FIRST POINT. Upon the trial the court below ruled in conformity with the legal conclusions reached, upon full argument, in the same court, upon the same securities, in a suit against the same defendant.

That case is reported, and the principles and authorities which disposed of this case in favor of the plaintiff below, at the trial, accord with the established doctrines of this court.

Cooper *v.* Town of Thompson, 13 Blatchf., 434.

There have never been any objections made to the entire conformity of these bonds in their issue, negotiation, and application, to the provisions of the enabling act by which the transaction was authorized, or to the right of recovery thereon at the suit of *any* holder, save the two following:

First. The enabling act provided that the prerequisite "*consent*" of the "tax-payers" shall state the amount of money authorized to be raised in said town or village, *and the railroad company in the stock of which said company shall be invested?*'

Act, sec. 2, Record, p. 74.

The act authorizes and restricts the investment in these terms:

"The money that shall be raised shall be invested in the stock of such company now organized, or that may hereafter be organized, within two years after the passage of this act, for the purpose of building or aiding in the building of a railroad from the village of Monticello through the towns of Thompson, Forestburgh, and Deerpark to Port Jervis, in the county of Orange, and said money shall be applied and used in the construction of such road as aforesaid, its buildings, and necessary appurtenances, and for no other purpose."

Act, sec. 3, Record, p. 74.

The "*consent*" is set out in full in the record. (Folio 199.) It recites the act, by its title, describing the railroad, states the amount of money to be raised, and consents that, besides raising the money, the Commissioners may "do and perform such other acts and things necessary to carry into effect the provisions of the act aforesaid."

The objection to this "*consent*" is, that it does not "state" the railroad in which the investment is to be made.

Second. The other objection touches, not the prerequisites of the Commissioners' authority, but the manner of its execution.

The Commissioners exchanged the town bonds with the railroad company for its stock at the par of each. This is alleged to be not in pursuance of any authority conferred by the act, and to make the bonds invalid in the hands of any holder having notice of such negotiation.

The act of 1871 was passed in view of these alleged infirmities in the transaction by the Commissioners, and to remove the imputations upon the validity of the bonds arising therefrom.

The first section of this act provides, that "the acts of the Commissioners" (naming them) "in issuing bonds upon the faith and credit of their respective towns, and in exchanging them for the stock of the company organized for the purpose of constructing the railroad contemplated by said act, are hereby ratified and confirmed."

The second section of the act more elaborately, though scarcely more effectually, extirpates the objection of the defect in the "CONSENT," to which it is confined. It enacts that the bonds held either in good faith *or* for a valuable consideration, notwithstanding any defect in the "*consents*," shall be "as valid and effectual for every purpose as if such defect or omission had not occurred."

There is a *proviso* in this section that "any exchange of

bonds by said Commissioners for the stock of said company was made at the par value of the said bonds," and "that the respective issues of the said bonds by their Commissioners do not exceed the amount authorized by said act."

As there is nothing in the record to feed these provisos, they may be dismissed from the discussion.

Upon any recognized methods of forensic or judicial reasoning, and upon the jurisprudence of this court, it is difficult to discern any ground for reversal of the judgment below giving a recovery on these bonds.

SECOND POINT. Upon very recent decisions of this court, the alleged defect in the "consent" disappears, and the "consent" must be adjudged sufficient under the original enabling act.

Venice *v.* Murdock, 92 U. S., 494.
Scipio *v.* Wright, 101 U. S., 665.

The dissent of Mr. Justice Clifford and Mr. Justice Swayne, in this last case, was obviously not on this point, which sustained the judgment below, but upon the other point, which reversed it.

The opinion of the court upon the point now presented, is on pages 670, 671.

In the case at bar, the act had described the railroad company, in which alone the investment of the town's funds could be made. The consent of the tax-payers was required to that investment. Their consent to any other would have been nugatory.

The text of the consent exhibits complete evidence that the tax-payers signing knew of, and assented to, the statutory application of the money to be raised. The text was

more formal and comprehensive than the requirement of the act in that behalf; not less precise or less expressive of their assent.

If this question is thus disposed of in this court, there is no occasion to rely upon the act of ratification to cure this alleged infirmity.

THIRD POINT. If, however, corroboration of the bondholders' right to recover is needed from the remedial act of 1871, the terms of that act are precise and efficacious to that end.

There is no pretense, if the quality of *bona-fide* holder without notice of this defect in the consent, and for value, is important to the bondholders' recovery, that the plaintiff below does not occupy that position.

Indeed, the case in the Court of Appeals of New York, relied on by the plaintiff in error to defeat the present action, concedes that the defect in the "CONSENT" is cured by the remedial act, which is valid to that effect.

In Horton *v.* Town of Thompson, the court says:

"This consent was fatally defective in not naming the railroad company, to the construction of which the fund should be applied. Inasmuch, however, as the consent was sufficiently comprehensive in its terms to embrace the road in question, and the Legislature might legally have authorized it to be in the form in which it was actually given, the validating act of 1871 probably cured the defect in its form."

71 N. Y., p. 522.

But, under the uniform tenor of the decisions of this court, the recitals of the bond itself overreach, in the hands of a *bona-fide* holder, the original infirmity, if it should be so held by this court, and dispenses with any necessity of recourse to the act of 1871 for its cure.

FOURTH POINT. The second objection to the recovery of the plaintiff below remains to be considered, viz: the objection that the bonds were exchanged for stock of the company at the par of each, and such use of them was not in pursuance of the statute authority, and makes the bond void in the hands of every subsequent taker having notice of this fact.

This point, also, was considered by this court in the case of Scipio *v.* Wright, 101 U. S., *ut supra.*

In the first place, the facts in that case show that the plaintiff's vendor bought the bonds from the railroad company with actual notice that money had not been borrowed on them, but they had been exchanged for stock. The plaintiff bought them past due, and gave a note which remained unpaid. Therefore, the court says:

"Neither Howland, therefore, nor Wright stands in the position of a *bona-fide* purchaser without notice of the exchange of the bonds for stock. *Had either of them been such a purchaser, the plaintiff's right to recover could not be gainsaid.*" (P. 674.)

And this is the accepted doctrine of the New York cases. The People *v.* Mead, 24 N. Y., 114, holds that the exchange for stock instead of sale is not a defense against one "who purchased in good faith for a good and valid consideration." (p. 125.)

In the second place, this court considers whether the exchange of bonds for stock defeats a recovery by one affected with notice of that fact. Upon this the court says:

"Were the question an open one, it would seem that it ought not to be a defense."

"So far as discharging the debt of the town for its stock subscription is concerned, and so far as relates to obtaining a full-paid certificate, the transaction is, in legal effect, the same as if the money had been borrowed by the town directly and paid over to the company. And if it had ap-

peared affirmatively that Howland had paid the full face of the bonds and interest, without any discount, when he bought, *every object* which the statute could have had in view in enacting that it should be lawful for the town officers to borrow on the credit of the town a limited amount of money, and pay it over to the railroad company, executing town bonds therefor, would have been accomplished." "Such a case, however, is not presented by this record." (P. 174.)

This court holds, also, that this last view is the doctrine of the New York cases, which it proposes to follow, quoting Selden, J., in the leading case, as saying, "If what was done was the same in effect as if the money had been borrowed and paid over to the railroad company, the difference in form would not be material." (Gould *v.* Sterling, 23 N. Y., 456.)

Finally, the court holds that a plaintiff affected with notice of the exchange, and not showing that the *railroad company* received par value for the bonds when it parted with them, was by the New York decisions, precluded from recovering on bonds thus exchanged." (Pp. 675, 676.)

FIFTH POINT. Upon the doctrine of this court, as laid down in Scipio *v.* Wright, the present plaintiff, without seeking aid from the remedial act of 1871, can recover.

First. Because the record shows that both he and his vendors had no notice whatever of the *fact* that the bonds were exchanged for the railroad stock.

Second. Because the recitals of the bond carry no such information.

The recitals inform the purchaser (1) "that this bond is a valid security, being issued by virtue of an act entitled, &c.;" (2) that the town's promise to pay is "by virtue and in pursuance of the acts, &c.;" and (3) that the town has

value received for its obligation to pay the money of the bond "in the stock of the Monticello and Port Jervis Railway Company," which is precisely what the statute required it to have, and which the purchaser was interested to know that the town has, as a continuing means and resource for meeting the bonds.

Third. Because the circumstance of the railway company receiving par for the bonds on its parting with them affirmatively appears upon the record. This proof satisfies the requisition of equivalency in the exchange of bonds for stock to sale at par, and payment of proceeds to the railroad company exacted in the New York cases, as interpreted by this court in Scipio *v.* Wright.

This proof was not made in Horton *v.* Thompson, 71 N. Y., *ut supra.*

SIXTH POINT. The retention of the stock, the payment of coupons, and the secured advantage of the completed railroad, of which the town was co-proprietor, preclude the repudiation of these bonds.

If the town could have any relief, it would be upon the terms of restoring what it received for the bonds.

Town of Venice *v.* Woodruff, 62 N. Y., 462.

SEVENTH POINT. But the acceptance of this court of the New York cases as its guide on the question of the defense of the exchange of bonds, instead of its own doctrine on the point, is a departure from its previous rule on the question, and should not be adhered to.

In Venice *v.* Murdock, 92 U. S., 494, this court says:

"The decision of the Court of Appeals, in cases arising upon the same statute, and a similar state of facts, are not conclusive in this court, *as such decisions do not present a case of statutory construction.*"

The court further says, as a reason for not following the State courts, that "they are not attempts at interpretation." "They assert general principles, to wit, that persons empowered to borrow money and give bonds therefor, for the purpose of paying it to an improvement company, are not authorized to deliver the bonds directly to the company; a doctrine denied in this court, in the Supreme Court of Pennsylvania, and even in the Court of Appeals of New York. (People *v.* Mead, 24 N. Y., 124; Venice *v.* Woodruff, 62 Id. 462.")

The Commission of Appeals of New York holds the same view of these questions as being of general reason and jurisprudence, and not of interpretation of statutes.

In an opinion of great ability, in which the Commission of Appeals comes to conclusions on these questions in accordance with the doctrines of this court, Judge Johnson says:

"The questions involved are not peculiar to our jurisprudence, and do not depend on the special language of our Constitution, but rather upon views in respect to governmental power."

Duanesburgh *v.* Jenkins, 57 N. Y., 177, 194.

EIGHTH POINT. Upon the remedial act of 1871, the exchange of bonds for stock is expressly and effectually ratified. Of this no question has been or can be made.

In a single case, however, the competency of the Legislature of New York to pass the act is denied.

Horton *v.* Thompson, 71. N Y., 525–6.

The incompetency of the legislation is not put upon any prohibition or restriction of the Constitution of the State of New York, but upon the proposition that the tax-payers not having consented to an exchange of bonds for stock, it is beyond legislative power to ratify the exchange by authority of law.

This proposition will not approve itself to the reason of this court. It is wholly unsupported by authority. It is flatly at variance with recent decisions of the Commission of Appeals, and of the Court of Appeals itself. It cannot stand consistently with the settled jurisprudence of the State as to this familiar exercise of legislative power, and it does not assume to overrule these settled doctrines.

It was decided by a divided court, four to three judges, reversing a unanimous decision of the Supreme Court, and overruling a cotemporaneous decision of other judges of the Supreme Court in the same litigation.

5 Hun. R., 475; 7 Hun. R., 452.

An examination of the two cases of Duanesburgh *v.* Jenkins, 57 N. Y., 177, and of Williams *v.* Duanesburgh, 66 N. Y., 129, and of the leading cases there cited and commented on, will show that the case in 71 N. Y. is without reason or authority in the judicial history of the State.

The statutes, original and remedial, which are considered in these cases, are, perhaps, sufficiently cited in the cases. They are—

Statutes 1856, ch. 64.
Statutes 1857, ch. 401.
Statutes 1859, ch. 384.
Statutes 1864, ch. 402.

The earlier cases in the New York Reports, which maintain the legislative authority as established by these recent cases, are too numerous to cite. Leading cases are—

Bank of Rome *v.* Village of Rome, 18 N. Y., 35.
People *v.* Mitchell, 35 N. Y., 551.
(Citing and adopting Maryland *v.* B. & O. R. R. Co., 3 How. U. S., 534.)
Town of Guilford *v.* Supervisors, 13 N. Y., 143.
Darlington *v.* Mayor, &c., 31 N. Y., 164.
People *v.* Mayor, &c., 4 N. Y., 419.
Brewster *v.* Syracuse, 19 N. Y., 416.
People *v.* Mead, 24 N. Y., 114.

NINTH POINT. The effect of the judgment in the case of The People *v.* Benedict, given in evidence by defendant below, as a bar to plaintiff's recovery as *res adjudicata*, or its operation as *lis pendens*, does not require much attention. Nor does the third section of the ratifying act of 1871 give it any value in this litigation. Probably that equity suit for injunction was not included in the description "action or proceeding at law," used in that section.

The character of that suit has been sufficiently observed upon in the preceding statement of facts.

No decision in New York has paid any consideration to the proposition that the ratifying act was thus defeated by this stultification, and that the Attorney-General was the master of the Legislature and able to subvert its declared will.

In this court it is well settled that the doctrine of *lis pendens* does not affect holders of such securities as those in suit.

Lee County *v.* Rogers, 7 Wall., 181.
County of Warren *v.* Marcy, 97 U. S., 105.
Brooklyn *v.* Ins. Co., 99 Id., 362.
Block *v.* Commissioners, Ib., 686.
Town of Orleans *v.* Platt, Ib., 676.

TENTH POINT. The defect in the bonds, of the omission of the Commissioners to put a *seal* to their names, as directed by the act, and as recited in the bonds, seems to require no notice since the ratifying act of 1871.

It has never been mentioned in the litigations in the courts of New York, nor was it raised on the trial below.

As an original question, it is difficult to consider the form of the security, in its operation to bind the town, as very important.

LAST POINT. The judgment below should be affirmed with costs.

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Of Counsel for Defendant in Error.

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57 N.Y. 177

54 N.Y. 21